OREGON BULLETIN

Supplements the 2015 *Oregon Administrative Rules Compilation*

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KATE BROWN
Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

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

OAR Citations

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

Understanding an Administrative Rule's "History"

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

Locating Current Versions of Administrative Rules

The online version of the OAR Compilation is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit by the 15th of the previous month. The annual printed OAR Compilation volumes contain text for all rules filed through November 15 of the previous year. Administrative Rules created or changed after publication in the print Compilation will appear in a subsequent edition of the online Bulletin. These are listed by rule number in the Bulletin's OAR Revision Cumulative Index, which is updated monthly. The listings specify each rule's effective date, rulemaking action, and the issue of the Bulletin that contains the full text of the adopted or amended rule.

Locating Administrative Rule Publications

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

Filing Adminstrative Rules and Notices

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

Administratrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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REQUEST FOR COMMENTS PROPOSED CLEANUP AT PGE WILLAMETTE RIVER SITE

COMMENTS DUE: 5 p.m., Monday, March 2, 2015
PROJECT LOCATION: Willamette River Mile 13.1 and 13.5, Portland, OR
PROPOSAL: DEQ proposes that Portland General Electric (PGE) implement environmental cleanup of in-water sediment contaminated primarily with polychlorinated biphenyls, commonly known as PCBs, at two locations located adjacent to the east bank of the Willamette River upstream of the Hawthorne Bridge.
HIGHLIGHTS: Historical operations at upland facilities resulted in sediment contamination in the Willamette River, primarily through stormwater discharges. Environmental investigations conducted by PGE revealed river sediment contamination that exceeds risk screening levels. DEQ proposes that contaminated sediment be capped with about two feet of clean sand and gravel armoring on top. Select portions of the cap overlying the most contaminated areas will include an additional adsorptive clay treatment layer.
HOW TO COMMENT: Send comments to DEQ Project Manager Tom Gainer at 2020 SW Fourth Ave., Ste. 400, Portland, OR or gainer.tom@deq.state.or.us. For more information contact the project manager at 503-229-5326.

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

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

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to http://www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database", then enter 5249 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5249 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=5249&Screen=Load .

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will respond to comments after the comment period closes and approve the cleanup.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED CLEANUP FOR BLOCKS A&N SITE, PORTLAND, OREGON

COMMENTS DUE: Friday, February 27, 2015
PROJECT LOCATION: 510 NW 3rd Avenue, Portland, OR
PROPOSAL: The Department of Environmental Quality is proposing a cleanup action to address soil contamination at the Blocks A&N property, located in Portland at the west end of the Steel Bridge, just north of Glisan Avenue. Currently the property is unused, and has a former office building on the property. Due to pervasive lower level contamination at the property, the proposed cleanup consists of a minimal soil excavation and the constriction of several types of engineered caps that will be placed during future site redevelopment.
HIGHLIGHTS: Investigation at the Blocks A&N property has identified elevated concentrations of polynuclear aromatic hydrocarbons, also known as PAHs, in surface and subsurface soil on the property. This contamination is generally associated with the vicinity being mostly industrial since Portland's initial development. Though the site is currently unused and fenced, the soil at the site currently exceeds risk-based concentrations for future mixed-use redevelopment (office/commercial and residential), and requires additional cleanup remedies for that use. Due to the wide spread, low levels of contaminants, the proposed remedy consists of minor excavation of surface soils during site redevelopment, and engineered cap construction to be placed across the entire site. These caps will be maintained through a deed restriction on the property title, and will be regularly inspected and maintained. The work would be completed prior to site redevelopment.
HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Northwest Region office at 2020 SW Fourth Ave., Suite 400, Portland, Oregon 97201. To access site summary information including a DEQ staff report discussing the proposed remedy go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter 5830 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5830 in the Site ID/Info column. Send written comments by 5 p.m. Friday, February 27, 2015 to DEQ Project Manager Shawn Rapp, at the address listed above. If ten or more people or by a group with a membership of 10 or more submit a request, DEQ will hold a public meeting to receive verbal comments.
THE NEXT STEP: DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the proposed site remedy.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

REQUEST FOR COMMENTS DEQ PROPOSES CONDITIONAL NO FURTHER ACTION FOR WALDROP OIL BULK PLANT

COMMENTS DUE: 5 p.m., February 27, 2015
PROJECT LOCATION: 10402 W First St., Island City
PROPOSAL: The Department of Environmental Quality proposes to issue a conditional no further action determination for the Waldrop Oil Bulk Plant site located in Island City. DEQ issues a conditional no further action determination when a cleanup has met regulatory standards.
HIGHLIGHTS: The site is an active petroleum bulk plant built in 1930. Petroleum in the form of gasoline and diesel were released into the subsurface during the bulk plant's operation. Multiple investigations were performed to determine the full nature and extent of contamination related to historic releases at the property. Approximately 1,000 tons of contaminated soil was removed and transported off-site in 2008. Institutional controls were placed on multiple properties as part of the remedial action completed to address residual contamination.
HOW TO COMMENT: Send comments by 5 p.m., February 27, 2015, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 800 SE Emigrant Ave., Suite 330, Pendleton, OR 97801, by e-mail at Robertson.Katie@deq.state.or.us or by fax at 541-278-0168.

To access site summary information, the consent order, and other documents visit DEQ's Environmental Cleanup Site Information (ECSI) database at http://www.deq.state.or.us/lq/ecsi/ecsi.htm under Site ID 3348. To review the project file, contact the project manager above for a file review appointment.
THE NEXT STEP: DEQ will consider all public comments received before making a final decision on the proposed conditional no further action determination. DEQ will provide written responses to all public comments received.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS DEQ PROPOSES NO FURTHER ACTION FOR BUCK'S CORNER

COMMENTS DUE: 5 p.m., February 27, 2015
PROJECT LOCATION: Hwy 395 & Hwy 730, Umatilla
PROPOSAL: The Department of Environmental Quality proposes to issue a no further action determination for the former Buck's Corner site located in the southeast corner of Hwy 395 and Hwy 730 in Umatilla. DEQ issues a no further action determination when a cleanup has met regulatory standards. DEQ also proposes to delist the site from the Confirmed Release List.
HIGHLIGHTS: The site was a service station and truck stop that operated from 1968 until 2000. Petroleum in the form of gasoline and diesel were released into the subsurface during the station's operation. Approximately 100 tons of contaminated soil was removed and transported off-site for disposal.
HOW TO COMMENT: Send comments by 5 p.m., February 27, 2015, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 800 SE Emigrant Ave., Suite 330, Pendleton, OR 97801, by e-mail at Robertson.Katie@deq.state.or.us or by fax at 541-278-0168.

To access site summary information and other documents visit DEQ's Environmental Cleanup Site Information (ECSI) database at http://www.deq.state.or.us/lq/ecsi/ecsi.htm under Site ID 3098. To review the project file, contact the project manager above for a file review appointment.
THE NEXT STEP: DEQ will consider all public comments received before making a final decision on the proposed no further action determination and proposed delisting. DEQ will provide written responses to all public comments received.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS ON CERTIFICATE OF COMPLETION FOR LOST CREEK PRODUCTS, LLC AT THE FORMER GREGORY MILL SITE, EUGENE, OREGON

COMMENTS DUE: Tuesday, March 3, 2015
PROJECT LOCATION: The property includes five tax lots at 88233 Greenhill Road in Eugene, Oregon.
PROPOSAL: DEQ is preparing to certify that all actions required have been satisfactorily completed. This project has resulted in both environmental and economic benefits.
HIGHLIGHTS: In December 2012 Lost Creek Rock Products LLC entered a Prospective Purchaser Agreement Consent Order with DEQ and agreed to: 1) perform remedial design and remedial actions for the property in accordance with a DEQ-approved Scope of Work; and 2) record an Easement and Equitable Servitude with Lane County to provide the institutional controls necessary to ensure protectiveness of the remedial actions.

On September 29, 2014 Lost Creek Rock Products LLC requested issuance of a Certification of Completion based on satisfactory completion of all work items specified in the PPA.

DEQ reviewed the conditions stated in the PPA and the corresponding actions:

1) The remedy for the former Gregory Mill site has been designed and implemented, with construction of a cap over contaminated soil and an institutional control to ensure protectiveness by the cap in perpetuity.

2) The remedy for the former gun club site has been designed and implemented, with an institutional control that preserves the wetlands across the site in its current condition and restricts human use of the wetlands in perpetuity.

3) An Easement and Equitable Servitude (EES) was developed, signed and recorded with Lane County to encompass the institutional controls needed for remedy implementation.

The requirements have either been satisfied or included in the Certificate of Completion document.

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

The Certification of Completion confirms Lost Creek Rock Product LLC release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The consent order and certification of completion also provide Lost Creek Rock Product LLC with third party liability protection.
HOW TO COMMENT: Written comments can be sent to DEQ at 165 East 7th Street in Eugene, Oregon, 97401. To view the project files please call LeeAnn Gates at 541-686-7838, to schedule an appointment. If you have any questions, please contact DEQ project manager Greg Aitken, at 541-687-7361 or by email at aitken.greg@deq.state.or.us.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to: http://tinyurl.com/GregoryMill
THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the certification of completion. A public notice of DEQ's final decision will be issued in this publication.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach, 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call DEQ's TTY number (800) 735-2900.

REQUEST FOR COMMENTS PROPOSED CERTIFICATION OF COMPLETION FOR GOODWILL INDUSTRIES OF THE COLUMBIA WILLAMETTE AT THE FORMER FRANKO #6 PROPERTY, LINCOLN COUNTY, OREGON

COMMENTS DUE: Tuesday, March 3, 2015
PROJECT LOCATION: 906 US Highway 101 South in Lincoln City, Oregon.
PROPOSAL: DEQ is preparing certify the now complete remediation work associated with the Goodwill Industries of the Columbia Willamette redevelopment of the former Franko #6 property and six adjoining tax lots into a retail store and job connection center. The construction of a new retail store and job connection center at this location is now complete. In addition to the construction jobs during reuse of this site, the new facility will employ more than 40 full time positions and provide a no cost job placement to area residents.
HIGHLIGHTS: In January 2014 Goodwill Industries of the Columbia Willamette entered a Prospective Purchaser Agreement Consent Order with DEQ and agreed to complete a Scope of Work and record an Easement and Equitable Servitude on the property.

The Scope of work requires:

- Preparing a Corrective Action Plan and submitting for notice and comment
- Delivering progress reports including any soil, vapor sampling and groundwater reports
- Submitting a final Corrective Action Plan with recommendations for closure

The Easement and Equitable Servitude requires:

- Groundwater Use Restrictions
- Land Use Restrictions
- Use of Property Restrictions

In January 2015 Goodwill Industries of the Columbia Willamette submitted a final closeout report certifying that all obligations of the

PPA had been completed in accordance with the Consent Order, and requested a Certification of Completion as provided in Section 12 of the PPA.

DEQ reviewed the requirements of the PPA and the corresponding actions, and has made a preliminary determination that all obligations of the PPA, including the Scope of Work and Easement and Equitable Servitude, have been satisfactorily performed and that a Certification of Completion should be issued.

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

The Certification of Completion confirms Goodwill Industries of the Columbia Willamette release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The consent order and certification of completion also provide Goodwill Industries of the Columbia Willamette with third party liability protection.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Salem office 750 Front Street NE, Suite 120, Salem Oregon 97301. To schedule an appointment to review the file or to ask questions, please contact Jim Glass at 503-378-5044. Summary information and a copies of the documents referenced above are available in DEQ's Leaking Underground Storage Tanks database on the Internet.

To review this material, go to http://www.deq.state.or.us/lq/tanks/lust/lustpubliclookup.asp, then enter 21-88-4088; in the LUST Number box and click "Lookup" at the bottom of the page. Next, click the link labeled 21-88-4088 in the "Log Number" column. To be considered, written comments should be sent to Jim Glass, at the address listed above or by email at glass.jim@deq.state.or.us and must be received by 5:00 PM Tuesday, March 3, 2015. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

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

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call DEQ's TTY number, (800) 735-2900 or 711.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Massage Therapists
Chapter 334

Rule Caption: Clarify verbiage in existing rule; and modify late fees.

Date:	**Time:**	**Location:**
3-6-15	9 a.m.	748 Hawthorne Ave. NE Salem, OR 97301

Hearing Officer: Kate Coffey
Stat. Auth.: ORS 687.001, 687.041, 687.051, 687.121 & 687.071
Other Auth.: ORS 183 & 182.456-182.472
Stats. Implemented: ORS 687.011, 687.121, 687.031, 687.041, 687.051 & 687.071
Proposed Amendments: 334-001-0012, 334-001-0055, 334-001-0060, 334-010-0018, 334-010-0033, 334-020-0005, 334-040-0010
Last Date for Comment: 3-6-15, Close of Hearing
Summary: Amend maximum amount for late fees; clarify definitions and modify lapsed and inactive license renewal requirements.
Rules Coordinator: Ekaette Udosenata
Address: Board of Massage Therapists, 748 Hawthorne Ave. NE, Salem, OR 97301
Telephone: (503) 365-8657

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

Rule Caption: Clarifies division policy for program delegation requirements.

Date:	**Time:**	**Location:**
2-17-15	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff
Stat. Auth.: ORS 183.335, 455.030,455. 148, 455.150, 455.467, 455.469, 455.062 & 455.156
Stats. Implemented: ORS 455.148, 455.150, 455.467, 455.469, 455.062 & 455.156
Proposed Amendments: Rules in 918-020
Last Date for Comment: 2-20-15, 5 p.m.
Summary: This proposed rule clarifies division policy to require a municipality that administers and enforces a building inspection program to execute a memorandum of agreement and return a data request form as provided by the division annually
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Rule Caption: Amending the 2014 Oregon Plumbing Specialty Code

Date:	**Time:**	**Location:**
2-17-15	10 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff
Stat. Auth.: ORS 447.020, 455.020, 455.030 & 455.110
Stats. Implemented: ORS 447.020, 455.020, 455.030 & 455.110
Proposed Amendments: 918-750-0115
Last Date for Comment: 2-20-15, 5 p.m.
Summary: This proposed rule corrects an inadvertent error made during the adoption of the 2014 Oregon Plumbing Specialty Code regarding a code change proposal for removable fixture traps.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Rule Caption: Amends 2014 Oregon Structural Specialty Code & 2014 Oregon Residential Specialty Code

Date:	**Time:**	**Location:**
2-17-15	10:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff
Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.485, 455.496, 455.610 & 479.730
Stats. Implemented: ORS 455.110, 455.610 & 479.730
Proposed Amendments: 918-305-0105, 918-460-0015, 918-480-0010
Proposed Repeals: 918-800-0010, 918-800-0020, 918-800-0030, 918-800-0040
Last Date for Comment: 2-20-15, 5 p.m.
Summary: These proposed rules amend the 2014 Oregon Structural Specialty Code (OSSC) and 2014 Oregon Residential Specialty Code (ORSC). Changes include: removing conflicts in the OSSC for I-4 Daycares; clarifying the methodology for determining the minimum number of required plumbing fixtures in certain occupancies under the OSSC; modifying accessible shower design requirements; allowing detached accessory structures in the ORSC to exceed the current 3,000 square foot area limitation without the use of a sprinkler system; and correcting a conflict between the OSSC the 2014 Oregon Electrical Specialty Code (OESC) relating to panic and fire exit hardware requirements.

These proposed rules also move the solar photovoltaic provisions, which are currently printed in the Oregon Solar Installation Specialty Code (OSISC), into the OSSC. These provisions include both residential and non-residential requirements. Additionally, the division is making a change in allowable wind speed parameters for solar photovoltaic installations. These changes will eliminate the stand alone OSISC
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

Department of Consumer and Business Services,
Oregon Occupational Safety and Health Division
Chapter 437

Rule Caption: Adopt changes to recordkeeping and reporting requirements in Division 1, General Administrative Rules.

Date:	Time:	Location:
2-26-15	10 a.m.	Oregon OSHA Fremont Place, Bldg. I 1750 NW Naito Pkwy., Suite 112 Portland, OR 97209-2533
3-3-15	1 p.m.	Oregon OSHA, Red Oaks Square 1230 NE Third St., Suite A-115 Bend, OR 97701-4374
3-5-15	10 a.m.	Oregon OSHA 1140 Willagillespie, Suite 42 Eugene, OR 97401-2101

Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Adoptions: 437-001-0704
Proposed Amendments: 437-001-0015, 437-001-0700
Last Date for Comment: 3-11-15, 5 p.m.
Summary: Oregon OSHA must adopt rules that are at least as effective as the federal OSHA rules. On September 18, 2014, federal OSHA published a final rule that updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates. The previous list of industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997, and 1998. The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009. Note: The new rule retains the exemption for any employer with ten or fewer employees, regardless of their industry classification, from the requirement to routinely keep records.

The final rule also expands the list of severe work-related injuries that all covered employers must report to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA.

This rulemaking incorporates federal OSHA changes, but also makes additional changes:

The rules for reporting workplace incidents were moved to their own rule number, separating reporting from recordkeeping.

In addition to federal OSHA changes for reporting workplace incidents, the new requirement to report workplace amputations was revised to include any amputation or avulsion that includes bone and/or cartilage loss.

Clarifies inpatient hospitalization related to workplace illnesses and injuries.

Edits were made to enhance clarity so employers can better understand their responsibility to record workplace illnesses and injuries.

The annual summary requirements was modified for clarity and to allow for the employer to designate a representative to sign and certify that the information is correct, as long as the information is shared with a company executive.

A note was added reminding employers that, in addition to these reporting requirements, an injury involving a mechanical power press must also be reported to Oregon OSHA.

The definition of Standard industrial classification (SIC) was removed from OAR 437-001-0015 because it is no longer pertinent since the North American Industry Classification System (NAICS) is now used to classify industries.

Please visit our website: www.orosha.org

Click 'Rules' in the left vertical column and view our proposed, adopted, and final rules.

Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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

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

Date:	Time:	Location:
2-23-15	9 a.m.	Labor & Industries Bldg. 350 Winter St. NE, Rm. F Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.248 & 656.726(4)
Stats. Implemented: ORS 656, 656.245, 656.248, 656.252 & 656.254
Proposed Amendments: Rules in 436-009
Last Date for Comment: 2-26-15, Close of Business
Summary: The public may also listen to the hearing or testify by telephone: Dial-in number is 213-787-0529; Access code is 9221262#.

The agency proposes to amend OAR 436-009, "Oregon Medical Fee and Payment Rules," to:

- Adopt updated medical fee schedules (Appendices B, C, D, and E) and resources for the payment of health care providers;
- Add definitions of "date stamp" and "patient";
- Specify that a medical service provider who conducts independent medical exams may submit bills in any form or format agreed to by the insurer and the medical service provider;
- Explain time frames when medical providers must switch from using ICD-9-CM to ICD-10-CM codes for billing;
- Require that modifier "81" be used only to identify services of nurse practitioners and physician assistants who were surgical assistants during surgery;
- Make workers liable for payment of the difference in cost between a generic and a brand-name drug, if:
  — The prescribing provider has not prohibited substitution;
  — The insurer previously notified the worker about the liability; and
  — The worker insists on receiving a brand-name drug;
- Reduce the discounts on payment for certain diagnostic imaging procedures applied to multiple regions of the body;
- Require that the insurer replace a prosthetic appliance that is damaged when in use at the time of and in the course of employment with a comparable appliance, but the worker may choose to upgrade the appliance and pay the price difference; and
- Specify that all bills from pharmacies must include the prescribing provider's NPI (national provider identifier) or license number.

Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7717

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Department of Environmental Quality
Chapter 340

Rule Caption: Resource Conservation and Recovery Act Rule Amendments

Date:	Time:	Location:
2-17-15	3 p.m.	DEQ Headquarters, EQC Conference Rm. A 811 SW Sixth Ave. Portland, OR 97204-1390

Hearing Officer: Dave LeBrun, Jeannette Acomb

Stat. Auth.: ORS 183, 183.325–183.337, 192, 459, 465, 465.005, 465.009, 465.505, 466, 466.020, 466.075, 466.090, 466.105, 466.165, 466.180, 466.195, 468, 468.020 & 646
Stats. Implemented: ORS 192.410–192.505, 459A.580, 459A.590, 459A.595, 465.003, 465.006, 465.009, 465.500–466.635, , 466.005, 466.010, 466.015, 466.020, 466.025, 466.030, 466.035, 466.075, 466.090, 466.095, 466.105, 466.150, 466.160, 466.165, 466.195, 466.215, 466.300, 466.320, 466.505, 466.510, 466.515 & 468
Proposed Amendments: 340-100-0001, 340-100-0002, 340-100-0003, 340-100-0004, 340-100-0010, 340-101-0001, 340-101-0030, 340-102-0010, 340-102-0011, 340-102-0041, 340-102-0065, 340-102-0070, 340-103-0010, 340-104-0001, 340-104-0145, 340-104-0149, 340-105-0001, 340-105-0140, 340-106-0001, 340-109-0001, 340-111-0010, 340-111-0070
Last Date for Comment: 2-20-15, 4 p.m.
Summary: The Environmental Protection Agency delegates authority to DEQ to operate the federal Resource and Conservation Recovery Act hazardous waste program in Oregon. Oregon must periodically review and adopt new or amended federal rules to retain this delegated federal authority. DEQ last updated its rules in February 2009. In that rulemaking, DEQ incorporated by reference most federal rules enacted through June 30, 2007.

In this rulemaking, DEQ proposes to align its hazardous waste rules with federal rules. DEQ will do this by incorporating some previously adopted but subsequently amended federal rules, and incorporating some federal rules that have not been previously adopted into Oregon rules. These changes will enable Oregon to ask EPA to continue authorizing Oregon to operate its RCRA hazardous waste program.
Rules Coordinator: Meyer Goldstein
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6478

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

Rule Caption: K-Plan Services

Date:	Time:	Location:
2-19-15	2 p.m.	Human Services Bldg. 500 Summer Street NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210–410.300 & 441.520
Proposed Amendments: 411-035-0010
Last Date for Comment: 2-24-15, 5 p.m.
Summary: The Department of Human Services (Department) is proposing to amend the rules for the K-State Plan in OAR chapter 411, division 035 to make permanent temporary changes that became effective on November 10, 2014. The Department needs to amend OAR 411-035-0010 to be less restrictive in the definitions for Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), and any other related definitions. This needs to be done because the K-State Plan approved by the Center for Medicare and Medicaid Services (CMS) did not apply the limitations from OAR 411-015-0006 and 411-015-0007 to the ADL and IADL definitions and services provided for in this rule. This will be accomplished by removing the references to 411-015-0006 and 411-015-0007 in the definitions for ADL, IADL, and any other related definitions in this rule.
Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

Rule Caption: Nursing Facilities — Complex Medical Add-On

Date:	Time:	Location:
2-19-15	3 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Proposed Amendments: 411-070-0005, 411-070-0027, 411-070-0035, 411-070-0043, 411-070-0091
Last Date for Comment: 2-24-15, 5 p.m.
Summary: The Department of Human Services (Department), Aging and People with Disabilities (APD) is proposing to amend the rules for Nursing Facilities located in OAR chapter 411, division 070 to update the process in regards to complex medical add-on documentation. Definitions, along with all of the rules, were updated to reflect current Department terminology. The amendments also fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.
Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Human Services,
Child Welfare Programs
Chapter 413

Rule Caption: Repealing obsolete Child Welfare rules relating to Child Abuse Multidisciplinary Intervention (CAMI)

Date:	Time:	Location:
2-24-15	2 p.m.	500 Summer St. NE, Rm. 257 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 418.746, 418.783
Stats. Implemented: ORS 418.746, 418.783
Proposed Repeals: 413-300-0200 – 413-300-0280
Last Date for Comment: 2-27-15, 5 p.m.
Summary: The Department of Human Services, Office of Child Welfare Programs, proposes to repeal the rules on Child Abuse Multidisciplinary Intervention (CAMI), OAR 413-300-0200 to 413-300-0280. The rules implement the CAMI account and set forth eligibility criteria for county multidisciplinary teams to access the funds. Per ORS 418.746, the CAMI Program in the Department of Justice has authority to adopt rules regarding the CAMI account. Department of Justice administrative rules implement the account and set forth eligibility criteria to qualify for funds, at OAR 137-082-0200 to 137-082-0280. The Department of Human Services' rules on this topic are obsolete.

A copy of the draft rules can be accessed at the Child Welfare policy website: http://www.dhs.state.or.us/policy/childwelfare/drafts/drafts.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

Rule Caption: Amending rules relating to the REF and REFM programs

Date:	Time:	Location:
2-23-15	1 p.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.892 & 412.049
Other Auth.: 45 CFR 400
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.083, 411.892 & 412.049
Proposed Amendments: 461-001-0000, 461-101-0010, 461-110-0210, 461-110-0430, 461-145-0050, 461-145-0088, 461-145-0130, 461-145-0910, 461-145-0930, 461-193-0031
Last Date for Comment: 2-27-15, 5 p.m.
Summary: OAR 461-001-0000 about definitions for rules in chapter 461 is being amended to: remove reference to the REF (Refugee) program from the definition of 'caretaker relative'; remove reference to the REF and REFM (Refugee - Medical) programs from the definitions of 'dependent child' and 'minor parent'; and clarify the definition of 'primary person' for the REF and REFM programs.

OAR 461-101-0010 about program acronyms used in chapter 461 is being amended to remove the reference to the REF and REFM programs in the description of the JOBS program.

OAR 461-110-0210 about household groups is being amended to clarify when an individual who is absent from the household for longer than 30 days remains part of the household group in the REF and REFM programs.

OAR 461-110-0430 about filing groups in the REF and REFM programs and 461-193-0031 about eligibility requirements for Refugee Case Services Project (RCSP) are being amended to restrict newly arrived refugees who are being reunited with a spouse who is currently residing in the U.S. from forming a separate filing group that excludes the previously arrived spouse.

OAR 461-145-0050 about how burial spaces and merchandise are treated when determining income and resources, OAR 461-145-0910 about how self-employment income is treated, and OAR 461-145-0930 about how costs are excluded are being amended to include REFM as a program to which these rules apply.

OAR 461-145-0088 about how corporations and business entities are treated when determining income and resources is being amended to include REF and REFM as programs to which the rule applies and to remove an unnecessary reference to the Oregon Health Plan (OHP).

OAR 461-145-0130 about earned income is being amended to remove an inapplicable reference to dependent children as it relates to how earned income is treated in the REF and REFM programs.

In addition, the above rules are being amended to reflect new Department terminology, correct formatting and punctuation, and update statutory and rule references.

A copy of the draft rules can be accessed at the self-sufficiency policy website: http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Amending rules relating to child care assistance programs

Date:	Time:	Location:
2-23-15	1 p.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116 & 412.049
Other Auth.: 45 CFR 98
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.116, 411.117, 411.122, 411.135, 412.006 & 412.049
Proposed Amendments: 461-115-0016, 461-115-0050, 461-135-0405, 461-135-0407
Proposed Repeals: 461-115-0050(T)
Last Date for Comment: 2-27-15, 5 p.m.
Summary: OAR 461-115-0016 about the application process and reservation list for the Employment Related Day Care (ERDC) program is being amended to make permanent a temporary rule adopted on October 1, 2014 that added an additional exemption under which otherwise eligible ERDC families would not be placed on the reservation list. Under the amendment, new ERDC applicants that include a filing group member who is determined eligible for Temporary Assistance for Domestic Violence Survivors (TA-DVS) program benefits from the State of Oregon in the current month or at least one of the preceding three months will meet an exception to the ERDC reservation list.

OAR 461-115-0050 about when an application must be filed is being amended to make permanent a temporary rule adopted on October 29, 2014 that allows the Department to reopen families in the Employment Related Day Care (ERDC) program without requiring a new application when the family meets certain conditions. Under this amendment, effective October 1, 2014, the Department may reopen ERDC without a new application when all the following conditions are met:

- The case closed during the certification period;
- The family reports a change in circumstances prior to the end of the month following the closure; and
- The reported change will make them eligible for ERDC.

OAR 461-135-0405 about children receiving child care under a contract between a Head Start agency and the Department and 461-135-0407 about children receiving child care under a contract between an Oregon Program of Quality (OPQ) provider and the Department are being amended to prohibit a family participating in a contracted child care slot from continuing to receive Oregon child care benefits after they move out of state.

In addition, the above rules may be amended to reflect new Department terminology, correct formatting and punctuation, and update statutory and rule references.

A copy of the draft rules can be accessed at the self-sufficiency policy website: http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Amending rules relating to DHS and OHA estate recovery and personal injury liens

Date:	Time:	Location:
2-23-15	1 p.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049, 413.033, 413.042, 416.350, 416.351 & 2013 OL Ch. 14, Sec. 10
Stats. Implemented: ORS 409.050, 411.060, 411.070, 412.049, 413.033, 413.042, 416.350, 416.351, 416.540, 416.560, 416.570& 2013 OL Ch. 14, Sec. 10
Proposed Amendments: 461-135-0834, 461-195-0301, 461-195-0303, 461-195-0321
Last Date for Comment: 2-27-15, 5 p.m.
Summary: OAR 461-135-0834 about delivery of required notices to the Estate Administration Unit is being amended to clarify that Notices of Disallowance of Claim to the Department of Human Services (DHS) or the Oregon Health Authority (OHA) must be delivered to the Estate Administration Unit.

OAR 461-195-0301 about definitions is being amended to: clarify that compensation for adverse health care incidents under Oregon Laws 2013, chapter 5 are subject to the personal injury lien program; clarify that the Personal Injury Liens Unit is designated to administer the personal injury lien program for both DHS and OHA; add definitions for 'loan receipts' and 'trust agreements'; and make

other non-substantive edits to clarify definitions, correct formatting and punctuation, and update statutory and rule references.

OAR 461-195-0303 is being amended to: add a provision that the Personal Injury Liens Unit is designated to administer the personal injury lien program for DHS and OHA; enumerate the authority granted to the Personal Injury Liens Unit to administer the program; add references to OHA and DHS rules regarding the duty of public assistance recipients to pursue tort claims against third parties when DHS or OHA paid for injury-related services; add a requirement that public assistance recipients cooperate with the Personal Injury Liens Unit and the recipient's Coordinated Care Organization (CCO) in obtaining reimbursement from third parties when DHS, OHA, or a CCO paid for injury-related services, and enumerate specific duties to cooperate; add sanctions for assistance recipients who fail to cooperate, unless the recipient has "good cause" not to cooperate; and make other non-substantive edits to clarify language, correct formatting and punctuation, and update statutory and rule references.

OAR 461-195-0321 is being amended to: replace obsolete references to 'prepaid managed care health services organization' with 'Coordinated Care Organization (CCO)'; clarify the time period that a CCO has to request an assignment of lien; prohibit the use of loan receipts, trust agreements, or similar arrangements to guarantee reimbursement for medical costs paid by a CCO arising from a personal injury; and make other non-substantive edits to clarify language, correct formatting and punctuation, and update statutory and rule references.

A copy of the draft rules can be accessed at the self-sufficiency policy website: http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Rules Coordinator: Kris Skaro

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

Telephone: (503) 945-6067

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Rule Caption: Amending rules relating to public assistance programs

Date:	**Time:**	**Location:**
2-23-15	1 p.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro

Stat. Auth.: ORS 409.050, 411.060, 411.095, 411.404, 411.706, 411.816, 412.049, 412.124 & 414.025

Other Auth.: 7 CFR 273.13

Stats. Implemented: ORS 409.050, 411.060, 411.095, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124 & 414.025

Proposed Amendments: 461-140-0040, 461-145-0120, 461-145-0530, 461-165-0030, 461-175-0210

Proposed Repeals: 461-165-0030(T), 461-175-0210(T)

Last Date for Comment: 2-27-15, 5 p.m.

Summary: OAR 461-140-0040 about availability of income is being amended to make permanent a temporary rule adopted on September 19, 2014 to align with federal policy regarding disregarding a portion of certain income sources withheld to repay a previous overpayment of that same source of income, if double-counting will occur. A previous amendment to this rule became effective 7/1/14; however, it may not allow an adequate length of unavailability and may therefore result in double-counting. This revision will allow the Department to consider the same amount of withheld funds unavailable as was originally counted in determining eligibility for GA, GAM, OSIPM, and QMB rather than simply considering the number of months an overpaid benefit was counted.

OAR 461-145-0120 about earned income is being amended to clarify that earned income includes noncash net earnings (i.e. in-kind income) from self-employment.

OAR 461-145-0530 about tax refunds is being amended to remove language referring to refunds received between December 31, 2009 and January 1, 2013. The amended rule would state that income and property tax refunds, including Elderly Rental Assistance (ERA) are counted as a resource, regardless of date of receipt.

OAR 461-165-0030 about concurrent and duplicate program benefits is being amended to make permanent a temporary rule adopted on November 3, 2014 to allow Chafee Grant recipients to apply for and receive TANF benefits simultaneously if all other eligibility requirements are met. The change also prevents recipients from incurring overpayments based on receipt of both benefits as of January 1, 2013.

OAR 461-175-0210 regarding notices required when a client has moved or their whereabouts are unknown is being amended to make permanent a temporary rule adopted on November 14, 2014 to allow the Department to close Job Participation Incentive (JPI) benefits without sending a decision notice when the Department determines the benefit group has moved out of state or when mail is returned with no forwarding address. JPI is a $10.00 monthly incentive paid to employed SNAP clients and is issued as a monthly food benefit on the Oregon Trail Card (EBT).

In addition, the above rules may be amended to reflect new Department terminology, correct formatting and punctuation, and update statutory and rule references.

A copy of the draft rules can be accessed at the self-sufficiency policy website: http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Rules Coordinator: Kris Skaro

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

Telephone: (503) 945-6067

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Relating to allotment authority, university program approval requirements, public university support fund distribution.

Date:	**Time:**	**Location:**
2-17-15	1:30 p.m.	775 Court St. NE Salem, OR 97301

Hearing Officer: Kelly Dickinson

Stat. Auth.: ORS 351.738, 351.728, 351.735(3)(d) & 351.735(6)

Stats. Implemented: ORS 351.735(3)(f), 351.054(2), 352.089, 351.735(3)(g), 2013 SB 270, 2013 HB 3120, 2014 HB 4018 & 2014 SB 1525

Proposed Adoptions: 715-013-0005, 715-013-0020, 715-013-0025

Last Date for Comment: 2-20-15, 5 p.m.

Summary: 715-013-0005 (Allotment Authority): Effective July 1, 2014, the Higher Education Coordinating Commission (the Commission) became responsible for determining the allocation of state funds appropriated for public university support between the three universities with governing boards and the four universities that remain governed by the State Board of Higher Education/Oregon University System until July 1, 2015. While the Commission determines on an annual basis the overall allocation by institution, this rule is necessary to ensure that the Commission can instruct the Department of Administrative Services (DAS) as to the precise timing, regularity and amount of intermediate allotments. The proposed OAR allows for this operational authority to be vested in the Commission Executive Director, or designee, for ease of operations.

715-013-0020 (General Public University Program Approval Requirements): Establishes basic process and standards for the Higher Education Coordinating Commission (the Commission) approval of significant changes to academic programs at public universities. Defines "significant change."

715-013-0025 (Public University Support Fund Distribution): Establishes procedure for the allocation and allotment of the Public University Support Fund. It prescribes the components of the allocation calculation, called the Student Success and Completion Model, and the data elements that feed the model.

Rules Coordinator: Kelly Dickinson

Address: Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301
Telephone: (503) 378-5690

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Higher Education Coordinating Commission, Office of Degree Authorization
Chapter 583

Rule Caption: Update rules to reflect transfer to commission, correct citations, clarify language, and adopt procedural rules.

Date:	Time:	Location:
2-17-15	2:30 p.m.	775 Court St. NE Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 183.335, 183.341, 192.440, 348.603, 348.604, 348.605, 348.606, 348.607, 348.609 & 351.728
Other Auth.: ORS 348.594, 348.596, 348.597, 348.612, & 348.992 & 2013 OL Ch. 658
Stats. Implemented: ORS 183.335, 183.341, 348.594, 348.596, 348.597, 348.603, 348.604, 348.605, 348.606, 348.607, 348.609 & 351.728
Proposed Adoptions: 583-001-0015
Proposed Amendments: 583-001-0000, 583-001-0005, 583-030-0005, 583-030-0009, 583-030-0010, 583-030-0011, 583-030-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036, 583-030-0038, 583-030-0039, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0044, 583-030-0045, 583-030-0046, 583-030-0049, 583-050-0006, 583-050-0011, 583-050-0014, 583-050-0016, 583-050-0026, 583-050-0027, 583-050-0028, 583-050-0036, 583-050-0040, 583-070-0002, 583-070-0011, 583-070-0015, 583-070-0020
Proposed Repeals: 583-040-0005, 583-040-0010, 583-040-0025
Last Date for Comment: 2-20-15, 5 p.m.
Summary: The Higher Education Coordinating Commission (commission) is proposing to adopt a new temporary rule, OAR 581-010-0010, establishing a procedure for adopting fees for the purpose of recovering expenses incurred by staff responding to public records requests.

The commission is proposing to suspend OAR 583-040-0005, 583-040-0010, and 583-040-0025, which implemented the "adverse impact process" of ORS 348.603 because chapter 658, Oregon Laws 2013, amended ORS 348.603 and removed the "adverse impact process" from statute.

The Legislative Assembly transferred the duties, functions, and staff of the Office of Degree Authorization (ODA), Oregon Student Access Commission (OSAC) , to the commission. Chapter 637(9), Oregon Laws 2011. The commission is amending the former ODA's administrative rules to replace references in those rules to the ODA, ODA's director, OSAC, and OSAC's director with references to the commission and its executive director.

The commission is amending OAR 583-010-0000 and 583-001-0005, the former ODA's procedural rules, so that they conform to the commission's procedural rules in OAR 715-001-0020 and 715-001-0025.

The commission is amending rules throughout OAR chapter 583 to correct and update references in those rules to statutes and administrative rules, clarify obtuse language, update the commission's contact information, and conform to the Attorney General's Model Rules of Procedure.

The commission is amending OAR 583-030-0015, 583-050-0011, and 583-070-0011 so that the definitions established in those rules are presented alphabetically.
Rules Coordinator: Kelly Dickinson
Address: Higher Education Coordinating Commission, Office of Degree Authorization, 775 Court St. NE, Salem, OR 97301
Telephone: (503) 378-5690

Land Conservation and Development Department
Chapter 660

Rule Caption: Authorizes a new type of "reasons exception" for programs authorizing M49 transferable development credits

Date:	Time:	Location:
3-12-15	8:30 a.m.	635 Capitol St. NE Salem, OR 97301

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336, 2007 OL Ch. 424 & ORS 197.732(2)(c)
Proposed Adoptions: 660-004-0023
Last Date for Comment: 03-12-15 Close of Hearing
Summary: The Land Conservation and Development Commission (LCDC) is considering new rules and rule amendments to provide a framework for local governments to adopt programs that allow landowners to transfer severable development credits from properties with Measure 49 development authorizations to other locations, and between jurisdictions, as described in Measure 49 (Oregon Laws 2007, chapter 424, section 11) (See notices published in the January 1, 2015 Oregon Bulletin). The proposed new rule at OAR 660-004-0023 will provide standards to ensure that new local programs for transfer severable development credits are adopted in conformance with requirements for "reasons exceptions" in 660-004-0020 and 660-004-0022, which will allow development of land in certain locations, and in a manner, that may not be otherwise allowable under current rules or local land use regulations.
Rules Coordinator: Casaria Taylor
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 322

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Rule Caption: Adopts a definition for Primary Processing of Forest Products in forest zones

Date:	Time:	Location:
3-12-15	8:30 a.m.	635 Capitol St. NE Salem, OR 97301

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040 & 197.230
Stats. Implemented: ORS 197.040 & 197.230
Proposed Amendments: 660-006-0005
Last Date for Comment: 3-12-15, Close of Hearing
Summary: "Primary processing of forest products" is a use that currently may be allowed in forest zones, but which lacks a definition. The use is statutorily defined as it applies to exclusive farm use zones, but there is confusion as to whether that definition implicitly applies to forest zones as well. A definition for the use as it applies to forest zones will provide needed clarity for counties and landowners.
Rules Coordinator: Casaria Taylor
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 322

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Oregon Department of Aviation
Chapter 738

Rule Caption: Department of Aviation Implementation of its State Agency Coordination Program

Date:	Time:	Location:
2-19-15	10 a.m.	Port of Portland, St. Helens B 7200 NE Airport Way Portland, OR

Hearing Officer: Joy Howard
Stat. Auth.: ORS 835.035 & 835.112
Stats. Implemented: ORS 197.180
Proposed Adoptions: 738-130-0005, 738-130-0015, 738-130-0025, 738-130-0035, 738-130-0045, 738-130-0055, 738-130-0065,

738-130-0075, 738-130-0086, 738-130-0095, 738-130-0105, 738-130-0115, 738-130-0125, 738-130-0135
Last Date for Comment: 2-19-15, Close of Hearing
Summary: These rules are being adopted to establish the procedures to be used by the Department of Aviation in implementing the provisions of its State Agency Coordination Program and to provide guidance to assure that Department land use programs are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans.

This notice was first published January 1, 2015 and is being refiled to include a notice of a public rulemaking hearing.
Rules Coordinator: Lauri Kunze
Address: Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302-1125
Telephone: (503) 986-3171

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Oregon Department of Education
Chapter 581

Rule Caption: Prohibition on corporal punishment of K–12 students.

Date:	Time:	Location:
2-24-15	9 a.m.	255 Capitol St. NE Salem, OR

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 339.250
Stats. Implemented: ORS 339.250
Proposed Amendments: 581-021-0061
Last Date for Comment: 3-5-15, 9 a.m.
Summary: Corporal punishment for K–12 students is prohibited. The rule amendments make the definition of corporal punishment consistent with 2013 changes to Oregon law relating to restraint and seclusion.

- HB 2939 (now codified at ORS 339.291) was passed in 2011. This bill defined restraint and seclusion, and restricted the use of such practices to situations where: 1) the student's behavior imposes a reasonable threat of imminent, serious bodily injury to the student or others; and 2) less restrictive interventions would not be effective.

- HB 2192 (now codified at ORS 339.250) was passed in 2013. This statute revised Oregon's school discipline code, and reaffirmed the prohibition of corporal punishment in Oregon schools. The statute defines corporal punishment as the "willful infliction of, or willfully causing the infliction of, physical pain on a student."
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Provides exception for ban on use of Native American mascots by school districts

Date:	Time:	Location:
2-27-15	9 a.m.	255 Capitol St. NE, Bsmt A Salem OR

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 326.051, 332.075, 659.850 & 659.855
Stats. Implemented: ORS 326.051, 332.075, 338.115, 659.850 & 659.855
Proposed Amendments: 581-021-0047
Last Date for Comment: 4-9-15, 9 a.m.
Summary: In 2012 the State Board adopted this rule which prohibited the use of Native American mascots beginning July 1, 2017. The 2014 Legislature adopted SB 1509 which requires an exception to this prohibition for public schools which enter into agreement with tribes for the use of a mascot. The rule amendments:

Lists the nine federal recognized Oregon Native American Tribes.

Allows an exception to the previous ban on the use of Native American mascots for public schools that enter into written agreements with the Native American Tribe that the mascot represents, is associated with or is significant to.

For mascots that depict individuals, limits exception to only those macots that include the name of the tribe or tribe that is part of a confederation of tribes.

Specify who must approve valid agreement.

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

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Oregon Health Authority,
Division of Medical Assistance Programs
Chapter 410

Rule Caption: Tracheostomy Rule Amendment Requiring Additional Documentation

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042 and 414.065
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-122-0209
Last Date for Comment: 2-19-15, 5 p.m.
Summary: Tracheostomy rule amended with additional documentation requirements.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Update and Align OHP Member Education/Information Rules Affecting Members and Potential Members

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.725, 414.610–414.685
Proposed Amendments: 410-141-0280, 410-141-0300, 410-141-3280, 410-141-3300
Last Date for Comment: 2-19-15, 5 p.m.
Summary: These rules provide the regulated framework for OHP informational materials and education for OHP members and potential members. The related rules pertaining to "marketing" have been recently revised, having direct impact on the Member Education/Information Requirement rules. In the marketing rules, a clear distinction between rules pertaining to members versus potential members was made. This distinction needs to be carried through the Member Education/Information Requirement rules for clarity and symmetry. Additionally, we will update the current alignment with CFRs 438.10, 438.100 and 438.104 as they relate to each of these rules. There is a set for managed care organizations and one for coordinated care organizations for each of these rules.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Remove Not Covered Status from Billing Codes and Add Prior Authorization Requirement

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Proposed Amendments: 410-130-0200, 410-130-0220

Proposed Repeals: 410-130-0200(T), 410-130-0220(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: These rules list medical billing services not covered or services that the Division of Medical Assistance Programs (Division) considers to be bundled in other services for payment purposes. No payment is issued for services listed in this rule. This rule change will remove artificial disc procedures and intersex surgeries from this rule so that the Division may pay for these services. Payment consideration will be subject to prior authorization.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Medicaid Payment for Behavioral Health Services

Date:	Time:	Location:
5-15-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Proposed Adoptions: 410-172-0600, 410-172-0610, 410-172-0620, 410-172-0630, 410-172-0640, 410-172-0650, 410-172-0660, 410-172-0670, 410-172-0680, 410-172-0690, 410-172-0700, 410-172-0710, 410-172-0720, 410-172-0730, 410-172-0740, 410-172-0750, 410-172-0760, 410-172-0770, 410-172-0780, 410-172-0790, 410-172-0800, 410-172-0810, 410-172-0820, 410-172-0830, 410-172-0840, 410-172-0850
Proposed Repeals: 410-172-0000, 410-172-0010, 410-172-0020, 410-172-0030, 410-172-0040, 410-172-0050, 410-172-0060, 410-172-0070, 410-172-0080, 410-172-0090, 410-172-0100, 410-172-0110, 410-172-0120, 410-172-0130, 410-172-0140, 410-172-0150, 410-172-0160, 410-172-0170, 410-172-0180, 410-172-0190, 410-172-0200, 410-172-0210, 410-172-0220, 410-172-0230, 410-172-0240, 410-172-0250, 410-172-0260, 410-172-0270, 410-172-0280, 410-172-0290, 410-172-0300, 410-172-0310, 410-172-0320, 410-172-0330, 410-172-0340, 410-172-0350, 410-172-0360, 410-172-0370, 410-172-0380, 410-172-0390, 410-172-0400, 410-172-0410, 410-172-0420, 410-172-0430, 410-172-0440, 410-172-0450, 410-172-0460, 410-172-0470, 410-172-0480, 410-172-0490, 410-172-0500, 410-172-0510, 410-172-0600(T), 410-172-0610(T), 410-172-0620(T), 410-172-0630(T), 410-172-0640(T), 410-172-0650(T), 410-172-0660(T), 410-172-0670(T), 410-172-0680(T), 410-172-0690(T), 410-172-0700(T), 410-172-0710(T), 410-172-0720(T), 410-172-0730(T), 410-172-0740(T), 410-172-0750(T), 410-172-0760(T), 410-172-0770(T), 410-172-0780(T), 410-172-0790(T), 410-172-0800(T), 410-172-0810(T), 410-172-0820(T), 410-172-0830(T), 410-172-0840(T), 410-172-0850(T)
Last Date for Comment: 5-18-15, 5 p.m.
Summary: These rules describe the process for Medicaid providers to receive payment for providing behavioral health services to Oregon Medicaid recipients.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amending PDL Sept 23, 2014 DUR/P&T Action

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330–414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Proposed Amendments: 410-121-0030
Proposed Repeals: 410-121-0030(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: The Pharmaceutical Services program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:
410-121-0030:
Preferred:
Fenofibrate.
Memantine HCL (Namenda XR®).
Non-Preferred:
Niacin
Tricor™ — Brand only.
Trilipix™ — Brand only.
Golimumab (Simponi®).
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amending Prior Authorization Guide DUR/P&T Action Nov 20, 2014 Meeting

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312, 414.316
Stats. Implemented: ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353, 414.354
Proposed Amendments: 410-121-0040
Proposed Repeals: 410-121-0040(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:
410-121-0040:
ADHD Safety Edits — updated criteria.
Analgesics Non-Steroidal — updated criteria.
Antiemetics — updated criteria.
Benzodiazepines — new criteria.
CNS Sedative Non-Benzodiazepines — updated criteria.
LABA ICS Inhalers — updated criteria.
Naltrexone Extended Release Inj. (Vivitrol®) — updated criteria.
Nutritional Supplements (Oral Administration Only) — updated criteria.
Skeletal Muscle Relaxants — updated criteria.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Annual Updates for Relative Value Units, Clinical Lab and Ambulatory Surgical Centers
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742 & 414.743
Proposed Amendments: 410-120-1340
Proposed Repeals: 410-120-1340(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: The Division of Medical Assistance Programs (Division) will amend this rule to implement annual updates to the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services and Clinical Laboratory and Ambulatory surgical services.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

Rule Caption: Repeal Outdated HIV/AIDS Prevention Program Rules Now Administered by Public Health in Chapter 333
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042
Proposed Repeals: 410-143-0020, 410-143-0040, 410-143-0060
Last Date for Comment: 2-19-15, 5 p.m.
Summary: The Oregon Health Authority's Division of Medical Assistance Programs is repealing outdated HIV/AIDS prevention services program rules from Chapter 410. These rules were originally adopted in 1995 and have not been amended since that time. The HIV prevention program is currently administered by the Authority's Public Health Division, and the rules can be found in Chapter 333 division 22.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Oregon Health Insurance Exchange
Chapter 945

Rule Caption: 2016 Administrative Charge on Insurers

Date:	Time:	Location:
2-19-15	10 a.m.	16760 SW Upper Boones Ferry Rd. Suite 200 Durham, Oregon 97224

Hearing Officer: Gregory Jolivette
Stat. Auth.: ORS 741
Stats. Implemented: ORS 741.105
Proposed Adoptions: 945-030-0035
Last Date for Comment: 2-26-15, 5 p.m.
Summary: Establishes the 2016 administrative charge to be paid by insurers offering medical and dental plans through the Exchange.
Rules Coordinator: Gregory Jolivette
Address: Oregon Health Insurance Exchange, 16760 SW Upper Boones Ferry Rd., Suite 200, Durham, OR 97224
Telephone: (503) 373-9406

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Oregon Medical Board
Chapter 847

Rule Caption: Supervising Physician Organizations

Date:	Time:	Location:
2-24-15	9:30 a.m.	1500 SW 1st Ave., Suite 620 Portland, OR 97201

Hearing Officer: Nicole Krishnaswami
Stat. Auth.: ORS 677.265, 677.510
Stats. Implemented: ORS 677.205, 677.495, 677.510, 677.515
Proposed Adoptions: 847-050-0036
Proposed Amendments: 847-050-0010, 847-050-0027
Last Date for Comment: 2-24-15, Close of Business
Summary: The proposed new rule is a collective rule for all requirements for establishing and maintaining a supervising physician organization. The proposed rule amendments remove substantive provisions regarding supervising physician organizations from the definitions rule and the rule governing the supervising physician approval process.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Repeal agency rule on discovery in contested case hearings
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341 & 677.275
Proposed Repeals: 847-001-0020
Last Date for Comment: 2-23-15, Close of Business
Summary: The proposed repeal removes the discovery rule for contested case hearings because the Oregon Medical Board has adopted the Attorney General's model rule on discovery in contested case hearings, specifically OAR 137-003-0066.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Mandatory reporting requirements and fine for failure to report
Stat. Auth.: ORS 676.150, 677.205 & 677.265
Stats. Implemented: ORS 676.150, 677.092, 677.190, 677.205, 677.265 & 677.415
Proposed Amendments: 847-010-0073
Last Date for Comment: 2-23-15, Close of Business
Summary: The proposed rule amendments add clarity to the mandatory reporting requirements under Oregon Revised Statutes 676 and 677. The revised section (1) breaks the reporting requirements into categories for licensee self-reports, licensee obligations to report other professionals, and health care facility reports. The amendment adds a civil penalty for licensees who fail to report. The rule also updates the name of the state's monitoring program to the Health Professionals' Services Program and makes other housekeeping and general grammar updates.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: EMS Provider Scope of Practice
Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Proposed Amendments: 847-035-0030
Last Date for Comment: 2-23-15, Close of Business
Summary: The proposed rule amendment makes four changes. First, the amendment clarifies that the scope of practice is the maximum functions that may be assigned to EMS providers; it is not standing orders, protocols, or curriculum. Second, the amendment moves the provision allowing an EMT to perform other tasks under visual supervision as directed by the physician to the scope of practice for an Emergency Medical Responder. Third, the amendment corrects "Albuterol sulfate" to "albuterol." Fourth, the amendment expands the Paramedic's ability to initiate and maintain urinary catheters.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Oregon Patient Safety Commission
Chapter 325

Rule Caption: Updates the Oregon Patient Safety Commission 2013-2015 biennial budget by amending OAR 325-005-0015.

Date:	Time:	Location:
3-11-15	10 a.m.	2501 SW 1st Ave., Suite 200 Portland, OR 97201

Hearing Officer: Shannon O'Fallon
Stat. Auth.: ORS 442.820–442.835
Other Auth.: 2003 OL Ch. 9, Sec. 686
Stats. Implemented: ORS 182.462(1) & 182.462(2)
Proposed Amendments: 325-005-0015
Last Date for Comment: 3-11-15, Close of Business
Summary: In accordance with the rules governing semi-independent state agencies, this action updates the Oregon Patient Safety Commission 2013-2015 biennial budget from $3,242,464 to $3,734,138 by amending OAR 325-005-015.
Rules Coordinator: Bethany A. Walmsley
Address: Oregon Patient Safety Commission, PO Box 285, Portland, OR 97204
Telephone: (503) 224-9226

Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Clarify earnings crediting for IAP Account payments and change definition of "Anniversary Date."

Date:	Time:	Location:
2-24-15	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.350, 238A.375 & 238A.400
Proposed Amendments: 459-007-0320, 459-007-0330, 459-080-0250
Last Date for Comment: 3-6-15, 5 p.m.
Summary: OAR 459-007-0320 and 459-007-0330 outline how earnings are credited to distributions from the IAP. Lump sum distributions from the IAP are credited with the latest year-to-date calculation as of the date of distribution; IAP accounts of retirees electing installment payments are credited with the latest year-to-date calculation as of the date of the initial distribution. The latest year-to-date calculation is determined on a monthly basis, as defined in OAR 459-007-0001. The proposed rule change clarifies that the monthly latest year-to-date calculation is applied on a calendar month basis. So all distributions made in the same month will receive the same earnings crediting rate. The proposed change is a clarification for members; there is no change in our administration of the IAP.

One of the retirement options for the IAP is the Anticipated Lifespan Option (ALSO). This option employs a distribution method approved by the Internal Revenue Service (IRS) intended to establish substantially equal payments to retirees, which is an exception to the additional 10 percent tax on early distributions. The IRS approved method requires an annual recalculation of the retiree's account to determine the distribution(s) for the following year. This annual recalculation is determined on the retiree's anniversary date, currently defined as the first of the month following the initial distribution. The current definition of anniversary date causes the annual recalculation to fall out of sync with the timing of the distribution(s). For example, a retiree electing to receive annual installments would receive their second annual installment one month before the annual recalculation. The proposed rule change establishes the anniversary date as the first of the month of the date of distribution, bringing the annual recalculation in line with the timing of the distributions.
Rules Coordinator: Daniel Rivas
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

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Rule Caption: Clarify the enrollment requirements for the PERS-sponsored health insurance plan dental insurance program.

Date:	Time:	Location:
2-24-15	2 p.m.	PERS Boardroom. 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.410 & 238.650
Stats. Implemented: ORS 238.410, 238.415 & 238.420
Proposed Amendments: 459-035-0070
Last Date for Comment: 3-6-15, 5 p.m.
Summary: Clarify the enrollment requirements for the PERS-sponsored health insurance plan dental insurance program.
Rules Coordinator: Daniel Rivas
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

Oregon State Library
Chapter 543

Rule Caption: Hours of service

Date:	Time:	Location:
3-20-15	1 p.m.	Salem Public Library 585 Liberty St. SE Salem, OR 97301

Hearing Officer: MaryKay Dahlgreen
Stat. Auth.: ORS 357.012(2)
Stats. Implemented: ORS 357.012(2)
Proposed Amendments: 543-010-0034
Last Date for Comment: 3-20-15, 2 p.m.
Summary: ORS 543-010-0034 is being amended to reflect the authority the State Librarian has regarding operations of the State Library and specifically the hours of public service for the Talking Book and Braille Library and the Reference Room.

The hearing will be held at the Salem Public Library at 1:00 p.m., with a check in time of 10:00 a.m. If unable to attend the public hearing, comments will be accepted via email or U.S. mail until March 20, 2015. Send comments to Oregon State Library, Attn: MaryKay Dahlgreen, 250 Winter St NE, Salem OR 97301 or marykay.dahlgreen@state.or.us.
Rules Coordinator: MaryKay Dahlgreen
Address: Oregon State Library, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 378-4367

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Oregon State Marine Board
Chapter 250

Rule Caption: Review of Outfitter/Guide Registration rules including definitions, application requirements and revocations.

Date:	Time:	Location:
3-8-15	6:30 p.m.	Jackson Co. Search & Rescue Hall 620 Antelope Rd. White City, OR
3-15-15	6:30 p.m.	Columbia County Sheriff's Office 901 Port Ave. St. Helen's, OR
3-29-15	6:30 p.m.	Lane Fire Authority 88050 Territorial Hwy. Veneta, OR

Hearing Officer: Mervin Hee
Stat. Auth.: ORS 704
Stats. Implemented: ORS 704.020, 704.040 & 704.060
Proposed Adoptions: Rules in 250-016
Proposed Amendments: Rules in 250-016
Proposed Repeals: Rules in 250-016
Last Date for Comment: 4-30-15, 5 p.m.
Summary: Review and update of Outfitter Guide Rules. Reviewing "repeated" and "serious" in regards to certain violations for which OSMB has discretion to suspend, revoke, deny or restrict licensing of an outfitter and guide. Considering modification of the definition of "drop camp" to include fishing activities, and allowing non-boating guide registrations to be valid from date of issue, not just calendar year. Would add ORS 163 and 165 to list of statutes for which OSMB may sanction outfitters and guides.
Rules Coordinator: June LeTarte
Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065
Telephone: (503) 378-2617

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Oregon Tourism Commission
Chapter 976

Rule Caption: Adopt Wine Country License Plate rules as required by ORS 805.274(1)(a) and 805.274(1)(b)

Date:	Time:	Location:
2-10-15	9:30 a.m.	Seaside Civic and Convention Ctr. 415 First Ave. Seaside, OR 97138

Hearing Officer: Jeff Hampton
Stat. Auth.: ORS 284.111(6) & 805.274(3)
Stats. Implemented: ORS 805.274
Proposed Adoptions: 976-002-0010, 976-002-0020, 976-002-0030, 976-002-0040
Last Date for Comment: 2-6-15, Close of Business
Summary: Establishes rules for Wine Country License Plate matching grant guidelines and Tourism Promotion Distribution guidelines, clarifies eligibility and regional designations. These rules are believed to be fully compatible with legislative direction on the use of money generated from the net sales of Oregon Wine Country license plates. Businesses affected by these rules are believed to be Oregon Wine and Tourism Industry small businesses.
Rules Coordinator: Sarah Watson
Address: Oregon Tourism Commission, 250 Church St. SE, Salem, OR 97301
Telephone: (503) 967-1568

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Water Resources Department
Chapter 690

Rule Caption: Local rules governing control of well use in the Off-Project Area in the Klamath Basin.

Date:	Time:	Location:
2-18-15	6 p.m.	OIT, 3201 Campus Dr. Mt. Mazama Rm. Klamath Falls, OR

Hearing Officer: Doug Woodcock
Stat. Auth.: ORS 537.505–537.795 & 540.045
Other Auth.: OAR 690-009
Stats. Implemented: ORS 537.505–537.795 & 540.045
Proposed Adoptions: 690-025-0010
Last Date for Comment: 3-2-15, 5 p.m.
Summary: Establishes procedures in the Klamath Basin for the control of groundwater uses in the Off-Project Area for the benefit of senior surface water rights. The Off-Project Area is defined and limits the rule of application to the Sprague River basin, Williamson River basin, and the Wood River Valley, including Sevenmile Creek. The area of applicability is displayed in Attachment B in the draft rules.
Rules Coordinator: Joshua Spansail
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0874

Appraiser Certification and Licensure Board
Chapter 161

Rule Caption: Revisions to rules to implement new AQB criteria and House Bill 3330 regarding fingerprinting
Adm. Order No.: ACLB 5-2014
Filed with Sec. of State: 12-19-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 161-015-0015
Rules Amended: 161-001-0010, 161-006-0025, 161-006-0155, 161-006-0160, 161-008-0010, 161-010-0010, 161-010-0035, 161-010-0045, 161-010-0065, 161-010-0080, 161-010-0085, 161-015-0000, 161-015-0010, 161-015-0030, 161-020-0005, 161-020-0015, 161-020-0035, 161-020-0045, 161-020-0055, 161-020-0065, 161-020-0070, 161-020-0110, 161-020-0120, 161-020-0130, 161-020-0150, 161-025-0005, 161-025-0010, 161-025-0025, 161-025-0030, 161-025-0060, 161-030-0000, 161-040-0000, 161-050-0000, 161-530-0020, 161-570-0030
Rules Repealed: 161-020-0090, 161-015-0025
Subject: Amends Oregon Administrative Rule 161, Rule 0010 regarding Notice of Proposed Rulemaking; Division 006, Rule 0025 regarding location of copies of the budget; Rule 0155 regarding Allegation Reports; Rule 0160 regarding complaints, investigations and audits; Division 8, Rule 0010 regarding Access to Records; Division 10, Rule 0010 regarding Application Components and Disciplinary Actions Disclosure; Division 10, Rules 0035 regarding Experience and Education Requirements for SCGA; Rule 0045 regarding Experience and Education for SCRA; Rule 0065 regarding Experience and Education for SLA; Rule 0080 regarding Appraiser Assistant Registration Application and Renewal; Rule 0085 regarding Supervising Appraiser Experience and Education; Division 015, Rule 0000 regarding Application Process; Rule 0010 regarding Form of Application; Rule 0025 repealing the Out of State Credential Holder; Rule 0030 regarding Submission of Application; Division 20, Rule 0005 regarding Scope; Rule 0015 regarding Course Approval; Rule 0035 regarding Application for Course Approval; Rule 0045 regarding Criteria approval for Qualifying Education; Rule 0055 regarding Criteria Approval for Continuing Education; Rule 0065 regarding denial of approval; Rule 0070 regarding withdrawal of approval; Rule 110 QE content guidelines; Rule 0120 regarding CE content guidelines; Rule 0130 regarding Approval of non pre-approved QE and CE courses; Rule 0150 regarding time requirements for QE and CE; Division 25, Rule 0005 SCRA Scope of Practice; Rule 0010 regarding SLA scope of practice; Rule 0025 regarding Supervising Appraisers; Rule 0060 regarding Appraisal Standards and USPAP; Division 30, Rule 0000 regarding Criminal Background; Division 40, Rule 0000 regarding Inactive Status, Division 50, Rule 0000 regarding Temporary Non-Resident Applications, Rule 0050 regarding Reciprocity; Division 530, Rule 0020 regarding Background Check and Fingerprint Cards; Division 570, Rule 0030 regarding Complaints, Investigations and Audits.
Rules Coordinator: Gae Lynne Cooper—(503) 485-2555

161-001-0010
Notice of Proposed Rulemaking

Prior to adoption, amendment or repeal of any rule, the Board shall give notice of the intended action as required by ORS chapter 183 and by mailing or furnishing a copy of the notice to:

(1) The Associated Press;
(2) Capitol Press Room;
(3) Department of Justice
(4) The following associations and organizations:
(a) American Society of Appraisers — Oregon Chapter;
(b) Appraisal Foundation;
(c) Oregon Federal Housing Agency;
(d) Greater Oregon Chapter of the Appraisal Institute;
(e) International Association of Assessing Officers - Oregon Chapter;
(f) International Society of Appraisers — NW Chapter;
(g) International Right-of-Way Appraisers Association — Oregon Chapter 3;
(h) National Association of Independent Fee Appraisers — Oregon Chapter;
(i) National Association of Master Appraisers;
(j) Oregon Association of Realtors;
(k) Oregon Bankers Association;
(l) Oregon League of Financial Institutions;
(m) Oregon Mortgage Bankers Association;
(n) The Appraisal Subcommittee of the Federal Financial Institutions Examinations Council;
(o) The Appraiser Qualifications Board of the Appraisal Foundation;
(p) The Appraisal Standards Board of the Appraisal Foundation;
(q) Veterans' Administration;
(r) Federal Housing Administration;
(s) Oregon Department of Transportation;
(t) Oregon Department of Veteran's Affairs;
(u) Oregon Department of Revenue;
(v) Association of Mortgage Professionals
(w) Oregon Association of Mortgage Professionals

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1991(Temp), f. & cert. ef. 5-15-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-006-0025
Budget

The Board hereby adopts by reference the Board's 2013–2015 Biennium Budget of $1,603,227 covering the period from July 1, 2013 through June 30, 2015. The Board will amend budgeted accounts as necessary within the approved budget of $1,603,227 for the effective operation of the Board. The Board will not exceed the approved 2013-2015 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office, or the Board website.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 4-2001(Temp), f. & cert. ef. 9-12-01 thru 3-1-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-11-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 5-2003, f. & cert. ef. 11-10-03; ACLB 2-2005(Temp), f. 6-16-05, cert. ef. 7-1-05 thru 12-28-05; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2007(Temp), f. 6-6-07, cert. ef. 7-1-07 thru 11-30-07; BOC 1-2007, f. 10-31-07, cert. ef. 11-1-07; ACLB 3-2009(Temp), f. 5-15-09, cert. ef. 7-1-09 thru 11-30-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 1-2011(Temp), f. 5-2-11, cert. ef. 7-1-11 thru 11-30-11; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 2-2013(Temp), f. 6-12-13, cert. ef. 7-1-13 thru 12-26-13; ACLB 4-2013, f. 10-29-13, cert. ef. 11-15-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-006-0155
Allegation Reports

(1) All allegation reports must be in writing.
(2) Any person may file an allegation report.
(3) A member of the Board or the Administrator may initiate an allegation report.
(a) Before a member of the Board or the Administrator initiates an allegation report and investigation, the Enforcement Oversight Committee must review the allegation report and determine if an objective basis exists to believe that possible violations of ORS Chapter 674 and/or OAR chapter 161has occurred.
(4) The Board will accept anonymous allegation reports.
(5) The allegation report will be reviewed by the Administrator or the Administrator's designee to determine whether further action is required, or whether the matter may be dismissed as either frivolous or not within the Board's jurisdiction. If further action is required, the Administrator will initiate the investigation process.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14; ACLB 1-2014, f. & cert. ef. 4-22-14; ACLB 2-2014, f. & cert. ef. 5-20-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-006-0160
Complaints, Investigations and Audits

(1) A notice of investigation, together with a true copy of the allegation report as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of the person against whom the allegation is

filed. Unless otherwise specified in the notice of investigation, the Respondent must produce:

(a) True copies of records, including the workfile, within 30 days. No extension of the time will be granted; and

(b) Within 30 days, a written response to the allegations set forth in the allegation report.

(A) A respondent may request an extension to file a response to a notice of investigation. An extension of up to 30 days only will be approved, provided the extension request is submitted in writing to the Administrator within the 30 day time period. Good cause must exist that shows circumstances beyond the reasonable control of the respondent preventing a response within 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(2) The investigation may include all inquiries deemed appropriate to ensure that each case is processed in accordance with ORS Chapter 183.

(3) The Board may initiate an audit or other type of inquiry or investigation to verify an individual's compliance with ORS Chapter 674 and OAR chapter 161.

(4) Every licensed or certified appraiser or registered appraiser assistant must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of a license, certificate or registration, imposition of a civil penalty, or denial of a license, certificate, or registration, or any combination thereof.

(5) At the completion of the investigation process, the Enforcement Oversight Committee shall review the allegation report and all documents related to the investigation. If the Enforcement Oversight Committee determines that an objective basis exists to believe that violations of ORS Chapter 674 and/or OAR chapter 161 occurred, the Enforcement Oversight Committee will submit a report to the Board, and may authorize the Administrator to proceed with settlement discussions with the licensee.

(6) The EOC shall submit a report to the Board setting forth specific violations along with the facts supporting the Committee's recommendation.

Stat. Auth.: ORS 674.170, 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14; ACLB 1-2014, f. & cert. ef. 4-22-14; ACLB 2-2014, f. & cert. ef. 5-20-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-008-0010
Access to Records

Board public records are available for inspection by any party at the Board office during regular business hours.

(1) Any person wishing to obtain copies of specific public records may request these records from the Administrator's designated staff. Copies of these records will be supplied upon payment of the cost of copying, handling and postage, set by rule of the Board.

(2) Access to and disclosure of public records is subject to ORS 192.410 to 192.505.

(3) Personal inspection of public records must be arranged by appointment with the Administrator's designated staff.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 192.420 & 674.310
Hist.: ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-006-0130; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0010
Appraisers Credentials in Oregon, Application Components, Renewal Procedures, and Disciplinary Actions Disclosure

(1) There are three categories of appraisers in Oregon; state licensed appraiser, state certified residential appraiser, and state certified general appraiser.

(2) Unlicensed/Uncertified individuals may assist in the preparation of an appraisal, but are not allowed to sign the appraisal report.

(3) The application process has three components: Education, Experience and Examination. Appraisers in Oregon must demonstrate competency by meeting prerequisite qualifying or continuing education, experience and examination requirements established by the Board. On all initial and upgrade applications for credentialing, the Board must:

(a) Use a reliable means of approving appraiser experience;

(b) Select the work product to be analyzed for USPAP compliance;

(c) Analyze a representative sample of the applicant's work product;

(d) Exercise due diligence to determine whether submitted documents of work product or experience demonstrates compliance with USPAP.

(4) All licenses and certificates are subject to renewal every two years on or before the last day of the license or certificate holder's birth month.

(a) Each license or certificate may be renewed upon receipt of the renewal fee specified in OAR 161-003-0020, a complete renewal application that includes a current, recognizable, passport style color photograph of the applicant (taken within 30 days preceding receipt of the application), evidence of the completion of continuing education requirements as provided in 161-020-0150, and the fee. The completed application, fee, and evidence of continuing education requirements must be received in the Board office on or before the expiration date of the license to be considered timely. If the expiration date falls on a weekend or legal holiday, the renewal application must be received no later than 5:00 p.m. on the next business day following the date of expiration.

(b) Renewal applications received after the expiration date and within one (1) year of the date of expiration shall be assessed a late fee in addition to the renewal fee. It is unlawful for any appraiser to engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state after a license or certificate has expired and prior to properly renewing the expired license or certificate.

(c) If an appraiser fails to renew their license or certificate within one year from the date of expiration, the status of the license or certificate becomes terminated and they must reapply pursuant to OAR 161-010-0020 through 161-010-0065.

(d) Licensees on active duty with the United States Armed Forces at the time of renewal may, upon written request to the Board, be provided a military deferral allowing for their otherwise complete application, including fee and evidence of continuing education, to be considered timely if received by the Board within 180 days of release from active duty.

(5) Each licensee shall notify the Board within thirty (30) days of any disciplinary action imposed in any other state in which the person holds a license or certificate.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0035
Prerequisite Experience and Education Requirements for State Certified General Appraisers

As a prerequisite to taking the examination for certification as a State Certified General Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 3,000 cumulative hours of acceptable appraisal experience, including at least 1,500 hours of appraisal experience in non-residential appraising. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least thirty (30) months.

(a) Applicants whose initial State Licensed Appraiser or State Certified Residential Appraiser credential was issued by the Board, and not by another state licensing agency, are only required to submit an experience log that documents completion of an additional 1,500 hours of non-residential appraisal experience.

(b) Applicants who hold an active Oregon State Licensed Appraiser or a State Certified Residential Appraiser credential obtained through reciprocity or in accordance with OAR 161-015-0025, are only required to submit an experience log that documents completion of an additional 1,500 hours of non-residential appraisal experience. Additionally, the applicant must provide evidence to the Board, from the State issuing the applicant's initial credential, documenting that the initial credential was approved and issued to the applicant based upon an experience log rather than an experience-related affidavit.

(c) Applicants who cannot fulfill the requirements in paragraph (1)(a) or (b) above, must complete an experience log documenting at least 3,000 cumulative hours of acceptable appraisal experience as set forth in paragraph (1) above.

(2) Successfully completed not less than 300 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(c)), with the following exceptions as noted in paragraphs (2)(a), (2)(b) or (2)(c) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(B) Course(s) on Statistics, Modeling and Finance (15 hours);

(C) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(G) Electives (30 hours in not less than 15 hour increments).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Statistics, Modeling and Finance (15 hours);

(C) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(E) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (15 hours).

(G) Electives (30 hours in not less than 15 hour increments).

(c) Applicants holding a valid Oregon State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(C) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(D) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Report Writing and Case Studies (15 hours).

(3) A Bachelor's degree or higher from an accredited college or university

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0030 & 161-010-0040; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0045

Prerequisite Experience and Education Requirements for State Certified Residential Appraisers

As a prerequisite to taking the examination for certification as a State Certified Residential Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 2,500 cumulative hours of acceptable appraisal experience. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least twenty-four (24) months.

(a) Applicants whose initial State Licensed Appraiser credential was issued by the Board, and not by another state licensing agency, are only required to submit an experience log that documents completion of an additional 500 hours of appraisal experience.

(b) Applicants who hold an active Oregon State Licensed Appraiser credential obtained through reciprocity or in accordance with OAR 161-015-0025, are only required to submit an experience log that documents completion of an additional 500 hours of appraisal experience. Additionally, the applicant must provide evidence to the Board, from the State issuing the applicant's initial credential, documenting that the initial credential was approved and issued to the applicant based upon an experience log rather than an experience-related affidavit.

(c) Applicants who cannot fulfill the requirements in paragraph (1)(a) or (b) above, must complete an experience log documenting at least 2,500 cumulative hours of acceptable appraisal experience as set forth in paragraph (1) above.

(2) Successfully completed not less than 200 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(b), with the following exceptions as noted in paragraphs (2)(a) or (2)(b) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(C) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(D) Course(s) on Residential Report Writing and Case Studies (15 hours);

(E) Course(s) on Statistics, Modeling and Finance (15 hours);

(F) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(G) Electives (20 hours).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Statistics, Modeling and Finance (15 hours);

(B) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(C) Electives (20 hours).

(3) A Bachelor's degree or higher from an accredited college or university

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0065

Prerequisite Experience and Education Requirements for State Licensed Appraisers

As a prerequisite to taking the examination for licensure as a State Licensed Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) Completed 30 semester credit hours or 45 quarter credit hours of college level education from an accredited college, junior college, community college, or university, or holds an associate's degree or higher (in any field).

(2) At least 2,000 cumulative hours of acceptable appraisal experience. Cumulative hours must be acquired over at least twelve (12) months.

(3) Successfully completed not less than 150 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(b), with the following exceptions as noted in paragraphs (3)(a) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant Registration may satisfy the educational requirements for the State Licensed Appraiser credential by completing the following additional education hours:

(A) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(C) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(D) Course(s) on Residential Report Writing and Case Studies (15 hours).

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674
Hist: ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0080
Appraiser Assistant Registration — Application and Renewal Requirements

(1) A person desiring to participate in an appraiser training program must register with the Board and work under the direct supervision of one or more licensees who are in good standing with the Board, has been certified with the Board for a minimum of, three (3) years and has a supervising appraiser endorsement. Experience gained prior to registration will be not accepted.

(2) Prior to registering with the Board, an Appraiser Assistant applicant must complete 75 creditable hours of qualifying education and pass the applicable final examinations. The following qualifying education must be completed within the time frame specified:

(a)15-hour Appraisal Foundation's National USPAP course, or its equivalent, within two (2) years preceding the date of application;

(b) 30-hour Basic Appraisal Principles course within five (5) years preceding the date of application. The five-year requirement does not apply to licensees that register as an Appraiser Assistant to upgrade their license or certificate;

(c) 30-hour Basic Appraisal Procedures course within five (5) years preceding the date of application. The five-year requirement does not apply to licensees that register as an Appraiser Assistant to upgrade their license or certificate; and

(d) Complete a minimum of four (4) hours of an AQB approved Supervising Appraiser/Appraiser Assistant training course and successfully pass the final exam.

(e) Make arrangements with one or more licensees, with a Supervising Appraiser Endorsement, who agree to directly supervise their real estate appraisal activities.

(3) The applicant must submit an Appraiser Assistant Registration Application that meets the requirements of OAR 161-015-0010(1) through (5) and includes a non-refundable application fee and a copy of their supervising appraiser's endorsement as described on the application form.

(4) An applicant must be at least 18 years of age.

(5) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(6) The Appraiser Assistant Registration must be renewed on an annual basis. The renewal application must be submitted on the prescribed form and include the following:

(a) Verification of successful completion of the Appraisal Foundation's National USPAP Update course or its equivalent, if applicable (required during the second year and every two years thereafter);

(b) Verification of successful completion of no less than fourteen hours of qualifying or continuing education. The fourteen (14) education hours may include the USPAP Update course and must be obtained on or after the date their last registration was issued.

(7) During the period beginning on the day following the expiration date of the registration, and ending on the date of the renewal of the registration, an Appraiser Assistant will not receive experience credit for any experience accrued during the lapse in registration. If the Appraiser Assistant fails to renew the registration within one year from the expiration date, the registration is terminated and a new application must be submitted pursuant to ORS 161-010-0080.

(8) Appraiser Assistants on active duty with the United States Armed Forces at the time of renewal may, upon written request to the Board, be provided a military deferral allowing for their otherwise complete application, including fee and evidence of continuing education, to be considered timely if received by the Board within 180 days of release from active duty.

(9) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 2-2004, f. 5-25-04, cert., ef. 6-1-04; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-1-09; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2013(Temp), f. 6-28-13, cert. ef. 7-1-13 thru 12-26-13; ACLB 4-2013, f. 10-29-13, cert. ef. 11-15-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-010-0085
Pre-Requisite Experience and Education for Supervising Appraiser

Any licensee wishing to supervise a new appraiser assistant, must first apply for and receive a Supervising Appraiser Endorsement.

(1) In order to receive a Supervising Appraiser Endorsement, the applicant must:

(a) Be state certified for a minimum of three (3) years in the State of Oregon prior to being eligible to become a Supervisory Appraiser.

(b) Be in good standing and not subject to any disciplinary action within any jurisdiction for a period of at least 3 years that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice.

(c) Complete a minimum of four (4) hours of an AQB approved Supervising Appraiser/Appraiser Assistant Training Course and successfully pass the final exam prior to making application. A prior Supervising Appraiser/Appraiser Assistant Training Course and exam completed for purposes of registering as an appraiser assistant will not count towards obtaining a Supervising Appraiser Endorsement. Supervising appraisers who have taken a non-AQB approved course, must, after January 1, 2015 complete an approved AQB course before supervising any new appraiser assistants.

(d) Submit a completed Supervising Appraiser Endorsement application that includes the following:

(A) Non-refundable application fee as described on the application form; and

(B) Supervising Appraiser/Appraiser Assistant Training Course completion certificate.

(e) Successfully pass a Board analysis of appraisal work product to verify USPAP compliance.

(2) Upon application approval, the Board will issue the applicant a Supervising Appraiser Endorsement that authorizes the applicant to act as a Supervising Appraiser pursuant to OAR 161-025-0025.

(3) Any applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

(4) A Supervising Appraiser Endorsement may be suspended or revoked if the Board determines that the applicant has failed to directly supervise an Appraiser Assistant as required by OAR 161-025-0025.

Stat. Auth.: OAR 183.355(1)(a), 674.305(7) & 674.310(2)
Stats. Implemented: ORS 674.305(7) & 674.310(2)
Hist.: ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-1-09; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-015-0000
Application Process

Any person desiring to take an appraiser examination, must submit a completed pre-printed application evidencing completion of the required qualifying education and experience.

(1) Applicants must list qualifying education courses by date, course provider, approval number and classroom hours.

(2) Applicants must submit documentation of course completion in the form of official college transcripts, signed letters, or signed certificates of completion. Course outlines or other items may be requested to verify the prerequisite education.

(3) Applicants must submit a pre-printed experience log which details hours of appraisal experience claimed for credit. Such hours must meet the requirements of OAR 161-010-0035, 161-010-0045, or 161-010-0065 as applicable.

(4) The applicant may be required to submit an affidavit from an employer to verify experience claimed.

(5) The applicant may also be required to submit some or all written reports or file memoranda claimed on the experience log.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-015-0010
Form of Application

All appraiser and appraiser assistant applications must be submitted as prescribed in OAR 161-010-0080 or 161-015-0000.

(1) Where space does not permit an applicant to present her or his complete record of experience or education on the application forms, the applicant may duplicate the forms or attach appropriate addendum. Both physical and mailing addresses are required for home and business. All questions must be answered. All forms must be signed and dated.

(2) An application shall be accompanied by a current, recognizable passport style color photograph of the applicant taken within 30 days preceding receipt of the application.

(3) Withholding information, misrepresentation, or submission of untrue or false statements as part of the application are deemed to demonstrate untrustworthiness and are cause for a civil penalty under ORS 674.850 and either denial of an application or subsequent disciplinary action.

(4) The application must include the applicant's Social Security number for identification purposes as authorized by ORS 25.785 and will remain on file with the Board. Failure to provide a Social Security Number is grounds to deny an application.

(5) A first time applicant will be required to provide fingerprints for completion of a criminal background as provided in OAR chapter 161-030-0000.

(6) An application and the application fee shall be valid for six (6) months from receipt by the Board. After six (6) months, the applicant must submit a new application with the appropriate fee.

(7) An applicant for license or certificate shall have 6 months from the date of written notification of application approval to successfully pass the examination or the application shall be denied.

(8) An applicant in the Reserve components of the US Armed Forces, who is pursuing an appraiser license or certification prior to December 1, 2011, and who is called to active duty between December 1, 2011 and December 31, 2014, may satisfy the qualifications required under the 2008 Criteria for an additional time period after January 1, 2015. The extension of time shall be equal to the applicant's time of active duty, plus 12 months.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-2000, f. & cert. ef. 10-23-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-015-0015
Reciprocity

(1) The Board may recognize and accept the education and experience of applicants who hold a license or certificate obtained from another state. The out-of-state license or certificate must be active and the applicant must be in good standing in all states in which they are licensed and/or certified.

(2) An applicant may apply for an Oregon reciprocal real property appraiser license or certificate at a level consistent with their out-of-state license or certificate provided that:

(a) The appraiser licensing program of the other state is in compliance with the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 {12U.S.C.3331-3351} as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; and

(b) The other state has credentialing requirements that meet or exceeds those of Oregon.

(3) Each out-of-state credential holder applying for an Oregon reciprocal real estate appraiser license or certificate shall:

(a) Be at least 18 years of age;

(b) Be identified on the National Registry of the Appraisal Subcommittee as an active licensed or certified real property appraiser that currently conforms to the AQB criteria;

(c) Submit an application for a license or certificate on a form prescribed by the Board as set forth in OAR 161-015-0030; and

(d) Shall comply with all statutes and rules governing licensed or certified appraisers in Oregon. Each reciprocal licensee shall immediately notify the Board of any disciplinary action taken in any other state in which the licensee holds a license or certificate.

(4) Be subjected to a background check pursuant to OAR 161-030-0000.

Stat. Auth.: ORS 674.035(7) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-015-0030
Submission of License or Certificate Application

(1) Each application must be accompanied by a non-refundable application fee.

(2) An application that is not properly completed, does not contain all the required information, or is not accompanied by the required fee will be deferred. An application will also be considered incomplete if the check for payment of the required fees is dishonored;

(3) The application will be reviewed to determine whether the applicant has sufficient education and experience and is otherwise qualified to sit for the examination;

(4) An applicant who is not a resident of the State of Oregon must submit with the application, an irrevocable consent to service form appointing the Administrator of the Board as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(5) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(6) An out-of-state credential holder applying for an Oregon reciprocal real estate appraiser license or certificate must have successfully passed an AQB approved examination at a level consistent with the appraiser category applied for in the State of Oregon.

(7) The Board will obtain a National Registry Appraiser License History Report for possible disciplinary action. Alternatively, the Board may request the applicant to request a license history from the applicant's resident state indicating applicant is currently in good standing. This verification must be submitted directly to the Board office by the applicant's resident state licensing authority. The license history must be received by the board within thirty (30) days. Applicants must be in good standing in all states in which they are licensed or certified or the application will be denied.

(8) Upon issuance of a license or certificate, consistent with the scope of practice as provided in OAR 161-025-0000 and 161-025-0005, the appraiser is authorized to conduct real estate appraisal activity between the date of the issuance of the license or certificate, and the expiration date of the license or certificate, unless sooner revoked or suspended. No more than one license or certificate shall be issued and outstanding to, or in favor of, any appraiser at one time.

(9) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the board. An official action may include, but is not limited to, a notice of proposed denial of application.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-1999, f. & cert. ef. 4-20-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2013(Temp), f. 6-28-13, cert. ef. 7-1-13 thru 12-26-13; ACLB 4-2013, f. 10-29-13, cert. ef. 11-15-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0005
Scope

This division outlines the requirements for qualifying education for state licensed, state certified residential, state certified general appraisers, and appraiser assistants, continuing education for state licensed, state certified residential, state certified general appraisers, and appraiser assistants and the education course and course provider requirements. Course providers that have obtained approval of their course(s) under the Appraisal Qualifications Board of the Appraisal Foundation (AQB) Course Approval Program may be recognized by the Board as having satisfied the requirements of this rule. The Board retains the right to review, modify, or reject a course that has received AQB approval.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0015
Course Approval

(1) Courses shall be reviewed and approved under these rules as either Qualifying Education or Continuing Education. A course approved for Qualifying Education may also be used for continuing Education if the course meets the requirements of this section. An appraiser does not need to take or pass an examination for Continuing Education credit.

(a) A Qualifying Education Course must include an examination, provide at least 15 classroom hours of instruction, and be consistent, in terms of content, with the qualifying education course content guidelines in these rules;

(b) A Continuing Education Course must include a minimum of 2 hours of instruction and be consistent, in terms of content, with the Continuing Education course content guidelines in these rules.

(2) Course approval commences on the date initial approval is granted by the Board:

(a) Course approval by the Board is not retroactive (applicable prior to the date approval is initially granted) because previous offerings of an approved course have not been reviewed under these rules.

(3) Each approved course shall be assigned to one specific category as outlined in 161-020-0110(2)(a)–(o) and 161-020-0110(3).

(4) Each approved course shall be assigned a maximum number of classroom hours of instruction (including examination time if applicable).

(5) Each approved course shall have an index number assigned to indicate approval.

(6) Upon receipt of course approval, the course owner/affiliated entity (such as a state or local chapter of a national organization that owns a course) may represent in any advertising or other materials that the course is a Board approved course, provided that the number of classroom hours credit awarded by the Board is also clearly indicated when the number of credit hours awarded is less than the actual number of scheduled classroom hours.

(7) Course approval granted to a course owner shall apply to any affiliated entity subject to the following conditions:

(a) The course owner requires the affiliated entity to conduct the course:

(A) Utilizing the owner's course materials (including textbook and examinations, if any); and

(B) Allowing the same number of classroom hours as the course owner;

(C) In accordance with the course owner's policies relating to instructor qualifications, student attendance, course scheduling and course prerequisites (if applicable).

(b) The course owner assumes full responsibility in the event the affiliated entity violates any of the provisions of these rules.

(8) The Board reserves the right to conduct a full review of any approved course for any reason in connection with any course approval or at any other time. Further, the Board may establish a system of periodic course review.

(9) Approved courses will be assigned an expiration date, by the Board, three (3) years from date of approval, or the same expiration date as the AQB approval. Prior to expiring, a course provider must submit a course approval application, application fee and other required materials as outlined in OAR 161-020-0045 and 161-020-0055. Course approval for distance education courses offered online via the internet shall expire the same date as IDECC and/or AQB approval, whichever comes first. Prior to expiring, a course provider must submit a course approval application, application fee and other required materials as outlined in 161-020-0045 and 161-020-0055, along with copies of current IDECC and/or AQB approval letters.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0035
Application for Course Approval

Course owners seeking initial Board approval shall make application on a form prescribed by the Board, and submit all information required listed on the application form along with a non-refundable application fee. Course owners seeking Board approval for a qualifying education course shall specify on the application form which category of qualifying education they seek course approval for as outlined in 161-020-0110(2)(a)(A)–(O) and 161-020-0110(3). An application must be complete before it will be assigned for review by course reviewers.

(1) The Board shall exercise its best efforts, in accordance with applicable law, to protect the confidentiality of course examinations or other proprietary material submitted by applicants as part of their course materials.

(2) Course providers shall not misrepresent Board approval status of their course in advertising. If an applicant violates this provision, the Administrator may suspend the review of the course in question.

(3) State or Federal agencies or commissions are approved providers.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0045
Criteria for Approval of Course as Qualifying Education

In order to be approved as qualifying education, the course shall be found to satisfy all the criteria described in this rule:

(1) Current Classroom Offering — The course shall be a current offering of the course owner/affiliated entity that is generally presented by traditional classroom methods. Courses presented online, or by Compact Disc (CD), correspondence, videotape or remote television are eligible for approval only as provided in OAR 161-020-0140.

(2) Course Length and Content — The course shall be a real estate appraisal course that provides a minimum of 15 classroom hours of instruction (including examination time when applicable) and must comply with the "Qualifying Education Course Content Guidelines" in OAR 161-020-0110.

(3) Course Description — The course materials or syllabus must include a course description which clearly describes the content of the course.

(4) Summary Outline — The course materials or syllabus shall include a summary outline of major topics and the number of classroom hours devoted to each major topic.

(5) Learning Objectives — The course materials or syllabus shall include specific learning objectives which:

(a) Are appropriate for a qualifying education course;

(b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;

(c) Are consistent with the course description;

(d) Are consistent with the textbook and/or other instructional materials; and

(e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Work Assignments — The course materials or syllabus shall provide for in-class work assignments and/or out-of-class work/reading assignments, if necessary, to accomplish the stated learning objectives.

(7) Instructional Materials — Instructional materials to be used by students in the course shall:

(a) Cover the subject matter in sufficient depth to achieve the stated course learning objectives;

(b) Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;

(c) Reflect current knowledge and practice;

(d) Contain no significant errors;

(e) Reflect correct grammatical usage and spelling;

(f) Effectively communicate and explain the information presented;

(g) Be suitable in layout and format; and

(h) Be suitably bound/packaged and be produced in a quality manner.

(8) Examination(s) — Course examinations shall consist of either a series of examinations or a comprehensive final examination or both. The course examination(s) shall comply with the following criteria:

(a) The examination(s) contains a sufficient number of questions to adequately test the subject matter covered in the course;

(b) The amount of time devoted to the examination(s) is appropriate for the course;

(c) The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;

(d) The subject matter tested by examination questions is adequately addressed in the course instructional materials;

(e) The examination questions are written in a clear and unambiguous manner; and

(f) The examination questions are accurate and the intended correct answer is clearly the best answer choice.

(9) Prerequisites — The course owner/affiliated entity must have established appropriate prerequisites for any course other than an introductory course Basic Appraisal Principles, Basic Appraisal Procedures or a course on Uniform Standards of Professional Appraisal Practice (USPAP).

(10) Instructor Qualifications — The course owner/affiliated entity shall keep records documenting that their instructors meet the Board qualifications as follows:

(a) A baccalaureate degree in any field and three years of experience directly related to the subject matter to be taught; or

(b) A master's degree in any field and two years of experience directly related to the subject matter to be taught; or

(c) A baccalaureate degree in a field that is directly related to the subject matter to be taught and one year of experience directly related to the subject matter to be taught; or

(d) An associate degree in a field that is directly related to the subject matter to be taught and three years of experience directly related to the subject matter to be taught; or

(e) A masters or higher degree in a field that is directly related to the subject matter to be taught; or

(f) Five years of real estate appraisal teaching experience directly related to the subject matter to be taught; or

(g) Seven years of real estate appraisal experience directly related to the subject matter to be taught.

(h) For those instructing the Appraisal Foundation's National USPAP Course, as developed by the Appraisal Standards Board (ASB):

(A) At least one instructor must be a certified residential or certified general appraiser and;

(B) The instructor must be an AQB certified USPAP instructor.

(i) For those instructing a course equivalent to the Appraisal Foundation's National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser; and

(B) The instructor must be an AQB certified USPAP instructor.

(11) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

(a) Stipulate the percentage of attendance required by the student;

(b) Include, on the attendance records form, the instructor(s) name and the criteria under which they qualified;

(c) Provide that non-members of the course provider's association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(e) Provide a copy of the attendance record to the Board in a timely manner.

(12) Course Scheduling Policy — The course owner/affiliated entity shall have an established policy on course scheduling that provides a maximum of eight (8) classroom hours of instruction in any given day and appropriate breaks during each class session.

(13) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which shall include information regarding the course approval number, number of classroom hours, name of the course, date the course was completed and whether there was successful passage of the course examination.

(14) Audit Policy — The course owner/affiliated entity shall permit the Administrator, or the Administrator's representative, to audit the course and course material, at no cost to the Administrator or the Administrator's representative, in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review records appropriate to selected course offerings.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 2-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0010 & 161-020-0040; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-2000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0055

Criteria for Approval of Course as Continuing Education

In order to be approved as continuing education, the course must satisfy all criteria described in this rule.

(1) Current Classroom Offering — The course shall be a current offering of the course owner/affiliated entity that is presented by traditional classroom methods. Courses presented online, or by Compact Disc (CD), correspondence, videotape or remote television are eligible for approval only as provided in OAR 161-020-0140.

(2) Course Length and Content — The course shall involve a minimum of two classroom hours with the "Continuing Education Course Content Guidelines" in OAR 161-020-0120.

(3) Course Description — The course materials or syllabus shall include a course description which clearly describes the content of the course.

(4) Summary Outline — If more than one major topic is to be covered in the course, the course materials or syllabus shall include a summary outline of major topics to be covered and the number of classroom hours devoted to each major topic.

(5) Learning Objectives — The course materials or syllabus shall include specific learning objectives which:

(a) Are appropriate for a continuing education course;

(b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;

(c) Are consistent with the course description;

(d) Are consistent with the instructional materials; and

(e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Instructional Materials — Instructional materials for students shall be provided unless the applicant demonstrates to the satisfaction of the Board that such materials are not needed to accomplish the stated course learning objectives. =Any such instructional materials shall:

(a) Be appropriate in view of the stated course learning objectives;

(b) Reflect current knowledge and practice;

(c) Contain no significant errors;

(d) Reflect correct grammatical usage and spelling;

(e) Effectively communicate and explain the information presented;

(f) Be suitable in layout and format; and

(g) Be suitably bound or packaged, and be produced in a quality manner.

(7) Instructor Qualification — Course provider shall keep written records documenting that their instructors meet the Board qualifications as set forth below:

(a) Three years of experience directly related to the subject matter to be taught; or

(b) A baccalaureate or higher degree in a field directly related to the subject matter to be taught; or

(c) Three years of experience teaching the subject matter to be taught; or

(d) A combination of education and experience equivalent to (a), (b) or (c) of this section

(e) For those instructing the Appraisal Foundation's National USPAP Course, and/or the seven-hour Appraisal Foundation's National USPAP Update Course:

(A) At least one instructor must be a certified residential or certified general appraiser and;

(B) The instructor must be an AQB certified USPAP instructor.

(f) For those instructing courses equivalent to either the Appraisal Foundation's National USPAP Course or the seven-hour Appraisal Foundation's National USPAP Update course:

(A) At least one instructor must be a certified residential or certified general appraiser.

(g) For those instructing the Supervising Appraiser/Appraiser Assistant Course:

(A) The instructor must be a certified residential or certified general appraiser; and

(B) The instructor must have completed a Board sponsored Supervising Appraiser/Appraiser Assistant Course and passed the final exam.

(8) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

(a) Stipulate as to a percentage of attendance required by the student;

(b) Include on the attendance records form the Instructor(s) name and the criteria under which they qualified;

(c) Provide that non-members of the association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(e) Provide a copy of the attendance record to the Board in a timely manner.

(9) Course Scheduling Policy — If the course involves more than eight classroom hours, the course owner/affiliated entity shall have an established policy on course scheduling that provides for a maximum of eight (8) classroom hours of instruction in any given day and for appropriate breaks during each class session.

(10) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which should include information regarding the number of classroom hours, course approval number, name of course, date of completion and whether there was successful passage of the course examination (if applicable).

(11) Audit Policy — The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to audit the course and course materials at no cost to the Administrator or the Administrator's representative in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review their records appropriate to selected course offerings.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1992(Temp), f. & cert. ef. 11-25-92; ACLB 4-1992(Temp), f. & cert. ef. 12-2-92; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0020 and 161-020-0060; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0065
Denial of Approval

If an application for course approval is accepted for consideration, but the course is subsequently not approved by the Board, the course owner/affiliated entity shall be notified in writing. The Board will also notify the course owner/affiliated entity of the reasons for the denial of the application and also inform the course owner/affiliated entity of its right to appeal the decision to deny the application by requesting a contested case hearing in accordance with ORS Chapter 183 within sixty days of the notice of denial.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0070
Withdrawal of Approval by the Board

(1) The Board may withdraw approval at any time upon finding any of the following:

(a) That the course owner/affiliated entity provided false or misleading information in connection with an application for course approval or renewal;

(b) That a course is not being conducted in the manner represented at the time approval was granted or that a course no longer complies with the criteria for approval or renewal;

(c) That the course owner/affiliated entity does not enforce policies relating to course prerequisites, instructor qualifications, student attendance or course scheduling;

(d) That the course owner/affiliated entity misrepresents approval of a course by the Board in any manner, including failure to indicate in any advertising or other material claiming Board approval the number of classroom hours credit awarded when the credit hours awarded are less than the actual number of scheduled classroom hours;

(e) That the course owner/affiliated entity misrepresents any material fact relating to a course;

(f) That the course owner/affiliated entity has failed to maintain for a period of at least five years accurate records of students' course completion and to fill, within a reasonable period of time, requests for course completion letters or certificates from former students who satisfactorily completed a course;

(g) That the course owner/affiliated entity has failed to comply with any provisions of these rules.

(2) The Board shall notify the course owner/affiliated entity in writing of the reasons for the withdrawal of approval. The Board will also notify the course owner/affiliated entity that they shall have a period of sixty days following the date of such notice during which the course owner/affiliated entity may appeal the decision to withdraw course approval by requesting a contested case hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674.310
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0050; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0110
Qualifying Education Course Content Guidelines

(1) General Guidelines:

(a) The course must be a real estate appraisal course that involves a minimum of fifteen classroom hours of instruction (including examination time) on acceptable topics;

(b) The course must generally be broad in scope and must cover various principles, concepts, standards, practices and/or methods that are applicable generally to the performance of a wide range of appraisal assignments that will commonly be encountered by licensed or certified appraisers. The course must be intended to provide the student with a broad-based foundation of knowledge and skills in real estate appraising;

(c) Coverage in a course of additional specific topics not listed as typical specific topics under the categories of acceptable courses will not exclude that course from consideration provided that:

(A) The principal focus of the course is not on such additional topics;

(B) The additional topics covered are appropriate (consistent with course learning objectives); and

(C) The course contains not less than fifteen classroom hours of instruction on acceptable topics. However, the course must still be consistent with the parameters described in these rules.

(d) The section titled "Unacceptable Courses" describes specifically the categories of courses that are not acceptable as qualifying education under these rules;

(e) Courses will be evaluated based on their content without regard to the course title;

(f) The following factors shall be used to convert university, college, junior college and community college course credits into classroom hours:

(A) One (1) semester credit hour is equivalent to 1.5 quarter credit hours.

(B) One (1) quarter hour credit is equivalent to .67 semester credit hours.

(2) Qualifying Education Requirements for Licensure and/or Certification:

(a) Only courses approved by the AQB "Required Core Curriculum" will be credited toward the education requirements. Approved courses have been assigned to curricula as follows:

(A) Basic Appraisal Principles;
(B) Basic Appraisal Procedures;
(C) Residential Market Analysis and Highest and Best Use;
(D) Residential Appraiser Site Valuation and Cost Approach;
(E) Residential Sales Comparison and Income Approaches;
(F) Residential Report Writing and Case Studies;
(G) Statistics, Modeling and Finance;
(H) Advanced Residential Applications and Case Studies;
(I) General Appraiser Market Analysis and Highest and Best Use;
(J) General Appraiser Sales Comparison Approach;
(K) General Appraiser Site Valuation and Cost Approach;
(L) General Appraiser Income Approach;
(M) General Appraiser Report Writing and Case Studies;
(N) The Appraisal Foundation's National USPAP Course or its equivalent;
(O) Appraisal Subject Matter Elective courses.

(b) For state licensed appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in the AQB Real Property Appraiser Qualification Criteria and these rules:

(A) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(B) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(C) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(D) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(E) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(F) Course(s) on Residential Report Writing and Case Studies (15 hours)

(G) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(c) For state certified residential appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in the AQB Real Property Appraiser Qualification Criteria and these rules:

(A) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(B) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(C) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(D) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(E) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(F) Course(s) on Residential Report Writing and Case Studies (15 hours);

(G) Course(s) on Statistics, Modeling and Finance (15 hours);

(H) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(I) Appraisal Subject Matter Electives (20 hours);

(J) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(d) For state certified general appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in the AQB Real Property Appraiser Qualification Criteria and these rules:

(A) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(B) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(C) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(D) Course(s) on Statistics, Modeling and Finance (15 hours);

(E) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(G) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(H) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(I) Appraisal Subject Matter Electives (30 hours in not less than 15 hour increments);

(J) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(3) Acceptable Courses. Listed below are the categories of courses that are acceptable under these rules:

(a) Courses on Basic Appraisal Principles (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal concepts, principles, and methods that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Principles courses would substantially include the following specific topics:

(A) Real Property Concepts and Characteristics:

(i) Basic Real Property Concepts;

(ii) Real Property Characteristics;

(iii) Legal Description.

(B) Legal Consideration:

(i) Forms of Ownership;

(ii) Public and Private Controls;

(iii) Real Estate Contracts;

(iv) Leases.

(C) Influences on Real Estate Values:

(i) Governmental;

(ii) Economic;

(iii) Social;

(iv) Environmental, Geographic and Physical.

(D) Types of Value:

(i) Market Value;

(ii) Other Value Types.

(E) Economic Principles:

(i) Classical Economic Principles;

(ii) Application and Illustrations of the Economic Principles.

(F) Overview of Real Estate Markets and Analysis:

(i) Market Fundamentals, Characteristics, and Definitions;

(ii) Supply Side Analysis;

(iii) Demand Analysis;

(iv) Use of Market Analysis;

(G) Ethics and How They Apply in Appraisal Theory and Practice

(b) Courses on Basic Appraisal Procedures (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal procedures that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Procedures courses would substantially include the following specific topics:

(A) Overview of Approaches to Value;

(B) Valuation Procedures:

(i) Defining the Problem;

(ii) Collecting and Selecting Data;

(iii) Analyzing;

(iv) Reconciling and Final Value Opinion;

(v) Communicating the Appraisal.

(C) Property Description:

(i) Geographic Characteristics of the Land/Site;

(ii) Geologic Characteristics of the Land/Site;

(iii) Location and Neighborhood Characteristics;

(iv) Land/Site Considerations for Highest and Best Use;

(v) Improvements- Architectural Styles and Types of Construction.

(D) Residential Applications.

(c) Courses on Residential Market Analysis and Highest and Best Use (15 hours) that would substantially include the following specific topics:

(A) Residential Markets and Analysis:

(i) Market Fundamentals, Characteristics and Definitions;

(ii) Supply Side Analysis;

(iii) Demand Analysis;

(iv) Use of Market Analysis.

(B) Highest and Best Use:

(i) Test Constraints;

(ii) Application of Highest and Best Use;

(iii) Special Considerations;

(iv) Market Analysis;

(v) Case Studies.

(d) Courses on Residential Appraiser Site Valuation and Cost Approach (15 hours) that would substantially include the following specific topics:

(A) Site Valuation:

(i) Methods;

(ii) Case Studies.

(B) Cost Approach:

(i) Concepts and Definitions;

(ii) Replacement/Reproduction Cost New;

(iii) Accrued Depreciation;

(iv) Methods of Estimating Accrued Depreciation;

(v) Case Studies.

(e) Courses on Residential Sales Comparison and Income Approaches (30 hours) that would substantially include the following specific topics:

(A) Valuation Principles & Procedures - Sales Comparison Approach;

(B) Valuation Principles & Procedures - Income Approach;

(C) Finance and Cash Equivalency;

(D) Financial Calculator Introduction;

(E) Identification, Derivation and Measurement of Adjustments;

(F) Gross Rent Multipliers;

(G) Partial Interests;

(H) Reconciliation;

(I) Case Studies and Applications.

(f) Courses on Residential Report Writing and Case Studies (15 hours) that would substantially include the following specific topics:

(A) Writing and Reasoning Skills;

(B) Common Writing Problems;

(C) Form Reports;

(D) Report Options and USPAP Compliance;

(E) Case Studies.

(g) Courses on Statistics, Modeling and Finance (15 hours) that would include the following specific topics:

(A) Statistics;

(B) Valuation Models (AVM's and Mass Appraisal);

(C) Real Estate Finance.

(h) Courses on Advanced Residential Applications and Case Studies (15 hours) that would substantially include the following specific topics:

(A) Complex Property, Ownership and Market Conditions;

(B) Deriving and Supporting Adjustments;
(C) Residential Market Analysis;
(D) Advanced Case Studies.
(i) Courses on General Appraiser Market Analysis and Highest and Best Use (30 hours) that would substantially include the following specific topics:
(A) Real Estate Markets and Analysis:
(i) Market Fundamentals, Characteristics and Definitions;
(ii) Supply Side Analysis;
(iii) Demand Analysis;
(iv) Use of Market Analysis.
(B) Highest and Best Use
(i) Test Constraints;
(ii) Application of Highest and Best Use;
(iii) Special Considerations;
(iv) Market Analysis;
(v) Case Studies.
(j) Courses on General Appraiser Sales Comparison Approach (30 hours) that would substantially include the following specific topics:
(A) Value Principles;
(B) Procedures;
(C) Identification and Measurement of Adjustments;
(D) Reconciliation;
(E) Case Studies.
(k) Courses on General Appraiser Site Valuation and Cost Approach (30 hours) that would substantially include the following specific topics:
(A) Site Valuation:
(i) Methods;
(ii) Case Studies.
(B) Cost Approach:
(i) Concepts and Definitions;
(ii) Replacement/Reproduction Cost New;
(iii) Accrued Depreciation;
(iv) Methods of Estimating Accrued Depreciation;
(v) Case Studies.
(l) Courses on General Appraiser Income Approach (60 hours) that would substantially include the following specific topics:
(A) Overview;
(B) Compound Interest;
(C) Lease Analysis;
(D) Income Analysis;
(E) Vacancy and Collection Loss;
(F) Estimating Operating Expenses and Reserves;
(G) Reconstructed Income and Expense Statement;
(H) Stabilized Net Operating Income Estimate;
(I) Direct Capitalization;
(J) Discounted Cash Flow;
(K) Yield Capitalization;
(L) Partial Interests;
(M) Case Studies.
(m) Courses on General Appraiser Report Writing and Case Studies (30 hours) that would substantially include the following specific topics:
(A) Writing and Reasoning Skills;
(B) Common Writing Problems;
(C) Report Options and USPAP Compliance;
(D) Case Studies.
(n) Courses eligible for approval as elective courses for Qualifying Education. These courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules, but can qualify as electives if they are at least 15 hours in duration and an exam is required. Courses must focus primarily on advanced concepts/methods, a specialized aspect of real estate appraising, or appraising one specific type of property. Examples of course topics may include, but are not limited to the following:
(A) Real Estate Investment Analysis;
(B) Feasibility Analysis;
(C) Condemnation Appraising/Right of Way Appraising;
(D) Review Appraising;
(E) Mass Appraisal;
(F) Subdivision Analysis;
(G) Litigation/Testifying as Expert Witness;
(H) Appraising Condominiums;
(I) Appraising Manufactured Housing;
(J) Appraising Multi-Family Housing;
(K) Appraising Office Buildings;
(L) Appraising Farms;
(M) Appraising Land;
(N) Appraising Machinery and Equipment.
(O) Courses on the Uniform Standards of Professional Appraisal Practice (USPAP):
(A) The Appraisal Foundation's National USPAP Course or its equivalent are the only acceptable courses for this category.
(4) Courses not eligible for approval as Qualifying Education. These types of courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules. Courses which focus all or a vast majority of their instruction on only one comparatively narrow aspect of real estate appraising and which examine that one aspect in depth. These types of courses focus on the following topics:
(a) Estimating Building Costs;
(b) Estimating Accrued Depreciation;
(c) Cash Equivalency;
(d) Ellwood Mortgage-Equity Analysis;
(e) Use of Financial Calculators in Appraising;
(f) Valuation of Partial Interests.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ALCB 2-1994(Temp), f. & cert. ef. 5-2-94; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0120
Continuing Education Course Content Guidelines

This rule contains the course content guidelines which courses must satisfy in order to be approved under these rules as Continuing Education as defined in these rules:
(1) General Guidelines:
(a) The course must involve a minimum of two classroom hours of instruction on acceptable real estate appraisal or related topics;
(b) The course must contribute to the goal of maintaining or increasing the knowledge, skill and competence of real estate appraisers with regard to the performance of real estate appraisals in a manner that best serves the public interest;
(c) Any course that covers a real estate appraisal topic may be acceptable if it does not present information so basic in nature that the stated goal of continuing education will not be satisfied by the course;
(d) In order to be an acceptable real estate appraisal related topic, the education provided in the course must directly contribute to increasing or maintaining the appraiser's ability to perform real estate appraisals;
(A) Courses are not acceptable if they would merely contribute to the appraiser's personal development rather than to his/her ability to perform real estate appraisals;
(B) Courses are not acceptable if they would contribute only generally to the appraiser's knowledge of the business field, rather than specifically to operating an appraisal business.
(2) Acceptable Topics — This list is to assist education providers in understanding the course content requirements under these rules. Topics may include, but are not limited to the following:
(a) Real Estate Appraisal Topics:
(A) Appraisal Arbitration;
(B) Appraisal Laws, Standards and Ethics (review/update/applications);
(C) Appraising Any Specific Type of Property (for example: single-family residences, condominiums, manufactured housing, apartment complexes, office buildings, warehouses, farms, rural properties, etc.);
(D) Appraising from Blueprints and Specifications;
(E) Case Study of a Particular Type of Property;
(F) Cash Equivalency;
(G) Cash Flow Forecasting;
(H) Computer Applications in Appraising;
(I) Condemnation/Right of Way Appraising;
(J) Estimating Accrued Depreciation;
(K) Estimating Building Costs;
(L) Feasibility Analysis;
(M) Federal Agency Appraisal Regulations/Requirements;
(N) Highest and Best Use Analysis;
(O) Litigation (involving appraisal issues/appraiser testimony);
(P) Mass Appraisal;

(Q) Mortgage-Equity Analysis (Ellwood Formula);

(R) Real Estate Investment Analysis;

(S) Real Estate Market Analysis (advanced or specialized application);

(T) Review Appraising;

(U) Sales Comparison Techniques (advanced or specialized application);

(V) Special Techniques in Appraising for Ad Valorem Taxation Purposes;

(W) State Agency Appraisal Regulations/Requirements;

(X) Subdivision Analysis;

(Y) The Appraisal Foundation's National USPAP Course, the Appraisal Foundation's National USPAP Update Course, or their equivalents;

(Z) URAR Form Preparation;

(AA) UCIAR Form Preparation;

(BB) Use of Financial Calculators in Appraising;

(CC) Valuation of Partial (special) Interests;

(DD) Writing an Effective Narrative Report.

(b) Real Estate Topics:

(A) Real Estate Development;

(B) Real Estate Finance;

(C) Real Estate Investments;

(D) Real Estate (property) Law;

(E) Real Estate Property or Asset Management;

(F) Real Estate Mathematics;

(G) Real Estate Syndication;

(H) Real Estate Taxation;

(I) Federal/State Taxation of Real Estate Investments;

(J) Land Use Controls/Zoning.

(c) Business Topics:

(A) Accounting;

(B) Corporate Finance;

(C) Economics (macro and micro);

(D) Investments;

(E) Statistics.

(d) Other Topics:

(A) Appraising Machinery and Equipment;

(B) Business Valuation;

(C) Construction;

(D) Surveying.

(3) Unacceptable Topics — This list is to assist education providers in understanding the course content requirements under these rules. Topics may include, but are not limited to, the following:

(a) Real Estate Topics:

(A) Real Estate Practices:

(B) Real Estate Sales (and related topics);

(C) Real Estate License Law;

(D) Agency Law;

(E) Real Estate Office Management.

(b) Business Topics:

(A) Advertising/Marketing;

(B) Bookkeeping;

(C) Business Administration;

(D) Business Law;

(E) Computer Principles/Programming/Systems;

(F) Office Management/Systems;

(G) Personnel Management;

(H) Principles of Management;

(I) Typing/Word Processing.

(c) Personal Development Topics:

(A) Communications (oral or written);

(B) Interpersonal Communications;

(C) Memory Improvement;

(D) Public Speaking;

(E) Speed Reading;

(F) Stress Management;

(G) Time Management.

(d) Other Topics: Appraiser Examination Preparation.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0130

Approval Requirements for Non Pre-Approved Courses for Qualifying and Continuing Education

(1) The following courses are subject to the review and approval of the Administrator or designee and may be acceptable for approval as Qualifying Education and Continuing Education:

(a) Course work approved by the AQB which also meets the requirements of these rules;

(b) Courses approved for credit hours at a community college, college or university in the State of Oregon shall be approved by the Board if said courses are substantially the same as required in the rules and procedures. The applicant for certification shall submit documentation to show equivalency, i.e. course description, outlines, etc., to the satisfaction of the Board.

(2) Courses from providers located outside the State of Oregon may be acceptable as Qualifying Education and Continuing Education:

(a) If the course has been pre-approved by the licensure/certification board of that state and the procedures of that state board for approving Qualifying Education are equivalent to those of the State of Oregon;

(b) If the rules and procedures of the state of origin are not equivalent to those of the State of Oregon, the applicant may still submit the course for approval by the Board by submitting documentation to show equivalencies with OAR 161-020-0045, i.e. course description, outlines, etc.;

(c) If the state where the course was taken allows Qualifying Education courses to have a duration of less than 15 hours, as required in Oregon, but at least 30 hours with an examination, then the Board shall determine whether or not the course content is acceptable, is substantially the same as approval for new courses, and will be reviewed on a case by case basis for as long as such need exists. The burden of proof remains with the applicant to demonstrate the equivalency of the course work.

(3) For courses taken prior to the adoption of this program, the criteria for approval shall be based upon the requirements set forth in OAR 161-020-0045, i.e. course descriptions, outlines, etc.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-020-0150

Time Requirements for Qualifying Education and Continuing Education

(1) Qualifying Education:

(a) If approved by the Board as meeting the requirements of these rules, audio educational offerings taken prior to July 1, 1990, shall be acceptable to meet the Qualifying Education requirements for certification;

(b) There is no time limit regarding when qualifying education credit must be obtained, with the following exceptions:

(A) For applicants applying for certification, the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within four (4) years preceding the date of application; and

(B) For applicants applying to be a registered appraiser assistant, the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within two (2) years preceding the date of application. All other qualifying education for applicants applying to be a registered appraiser assistant must be obtained within five (5) years preceding the date of application, with the exception of licensed or certified appraisers registering as an appraiser assistant to upgrade their license.

(2) Continuing Education:

(a) Continuing education hours shall be reported as part of the renewal application process. Reporting shall be on a form prescribed by the Board which includes the name of the educational provider, course subject matter, location, number of hours, course name, date of course, approval number and appraiser's name. The appraiser shall also submit a copy of the certificate of completion, URCEC form or grade report issued by the course provider;

(b) "Carry over" of hours from past to future years will not be allowed;

(c) The same course cannot be repeated for use as continuing education within a license cycle, with the exception of USPAP;

(d) Extension of time to satisfy continuing education hour requirements will not be permitted;

(e) USPAP:

(A) The Appraisal Foundation's National USPAP Update Course, or its equivalent, is required for renewal of all licensed and certified appraisers every two year license cycle.

(B) Registered Appraiser Assistants must successfully complete the Appraisal Foundation's National USPAP Update Course, or its equivalent, at a minimum of every two years.

(f) Twenty-eight hours of continuing education is required for renewal and must be taken between license/certification issue and expiration dates. Credit towards the classroom hour requirements shall be granted only where the length of the educational offering is at least two hours.

(g) Appraisers may receive up to eight (8) hours of continuing education credit for course instruction of a Board approved course. However, the appraiser cannot receive credit for course instruction of the same course within a license cycle.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-025-0005
State Certified Residential Appraiser

(1) A state certified residential appraiser (SCRA) is authorized to appraise:

(a) All types of one-to-four family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one-to-four family residential purposes, and where the highest and best use is for one-to-four family residential purposes;

(b) All other types of real property having a transaction value of less than $250,000.

(2) The certified residential classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

(3) A state certified residential appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties:

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(4) A state certified residential appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value:

(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(5) The state certified residential appraiser may appraise properties involving partial taking or where the value of the larger parcel is within the scope of practice for the state certified residential appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state certified residential appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's practice.

(a) In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(A) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(B) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(C) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-025-0010
State Licensed Appraiser

(1) A state licensed appraiser (SLA) is authorized to appraise:

(a) Non-complex, one-to-four family residential units having a transaction value of less than $1,000,000;

(b) Complex one-to-four family residential units having a transaction value of less than $250,000.

(2) If, during the course of an appraisal assignment of a one-to-four family residential property, the state licensed appraiser identifies factors that would result in the property, market conditions, property characteristics, or form of ownership, to be a complex one-to-four family residential property appraisal having a transaction value of $250,000 or more, they must inform the client that the assignment is outside the scope of their license, decline the assignment, and advise the client that a state certified residential or certified general appraiser must complete the assignment. The same is true for all other types of real property found to have a transaction value of $250,000 or more.

(3) A state licensed appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties:

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(4) A state licensed appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value:

(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(5) The state licensed appraiser classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

(6) The state licensed appraiser may appraise properties involving partial taking or condemnation actions where the value of the larger parcel is within the scope of practice for the state licensed appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state licensed appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's license.

(a) In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(A) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(B) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(C) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1995, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-025-0025
Supervising Appraiser (SA)

(1) To supervise Registered Appraiser Assistants, the supervising appraiser must be state-certified and in "good standing" in the State of Oregon for a period of at least 3 years. Supervising Appraisers shall not have been subject to any disciplinary action within any jurisdiction within the last 3 years that affects the Supervising Appraiser's legal eligibility to engage in appraisal practice. Only qualified State Certified Residential Appraisers and State Certified General Appraisers may supervise Registered Appraiser Assistants.

(2) Supervisory appraisers may not supervise more than three (3) registered appraiser assistants at one time.

(3) The supervising appraiser shall be responsible for the training, guidance and direct supervision of the appraiser assistant by accepting responsibility for the appraisal by signing and certifying the appraisal complies with USPAP, reviewing and signing the appraiser assistant appraisal reports, and personally inspecting each appraised property with the appraiser assistant until the supervisory appraiser determines the appraiser assistant is competent to inspect the property, in accordance with the COMPETENCY RULE of USPAP for the property type and all applicable appraisal laws and rules. To do so, the supervising appraiser must:

(a) Ensure that the appraiser assistant gains sufficient knowledge, skills and abilities that will enable them to do all of the following:

(A) Define the appraisal problem.

(i) Identify and locate the real estate;

(ii) Identify the property rights to be valued;

(iii) Identify the use of the appraisal

(iv) Define value(s) to be estimated;

(v) Establish date(s) of value estimate(s);

(vi) Identify and describe the scope of the appraisal; and

(vii) Identify and describe limiting conditions or limitations.

(B) Conduct preliminary analysis, select and collect applicable data.

(i) Identify general data (regional, city and neighborhood) — social, economic, governmental and environmental factors;

(ii) Identify specific data (subject and comparables) — site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and

(iii) Identify competitive supply and demand (the subject market) — inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies.

(C) Conduct an analysis of the subject property which includes:

(i) Site/improvements;

(ii) Size;

(iii) Costs;

(iv) Elements of comparison; and

(v) Units of comparison.

(D) Conduct highest and best use analysis (specified in terms of use, time and market participants).

(i) Land as if vacant and available; and

(ii) Property as improved (existing or proposed).

(E) Estimate land value, including on-site improvements.

(F) Estimate value of the property using each of the three approaches to value — cost, sales comparison and income capitalization.

(G) Reconcile each value indication and reconcile the final value estimate.

(H) Report estimate(s) of value(s) as defined.

(b) Review each appraisal report the appraiser assistant prepares to ensure accuracy and reliability;

(c) Ensure that the appraisal report includes proper disclosure regarding the inspection of the subject and the comparable sales as required by OAR 161-025-0060(3).

(d) Make a clear and prominent disclosure of real estate appraisal assistance in each appraisal report by identifying each individual category of experience that the appraiser assistant provided as outlined in OAR 161-025-0025(3)(a)(A) through (H); and

(e) Accept responsibility for the appraisal report by signing and certifying that the report has been prepared in compliance with USPAP.

(f) Ensure that the appraiser assistant will be granted experience credit by doing the following:

(A) Verifying that the appraiser assistant is currently registered with the Board. Experience gained prior to registration or after a registration has lapsed will not be credited toward the experience hours required to become licensed or certified.

(B) Jointly maintain the appraisal experience log with the appraiser assistant to assure the log is accurate, current and complies with Oregon Administrative Rules. At a minimum, the appraisal log requirements shall include:

(i) Type of property;

(ii) Date of Report;

(iii) Address of appraised property;

(iv) Description of work performed by the appraiser assistant and the scope of the review and supervision of the Supervisory Appraiser;

(v) Number of actual work hours by the appraiser assistant on the assignment, and the signature and state certification number of the supervisory appraiser.

(vi) Maintain a separate experience log for each supervising appraiser.

(C) Reviewing the log on a monthly basis, have the appraiser assistant sign the log, and have the appraiser assistant maintain the ongoing log for any future application.

(D) Allowing the appraiser assistant to obtain copies of any appraisal reports on which they provided assistance.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-025-0030
Appraiser Assistant

The appraiser assistant must register with the Board in order to receive experience credit towards obtaining a real estate appraiser license or certificate.

(1) An appraiser assistant must work under the direct supervision of an Oregon certified appraiser.

(2) The appraiser assistant, before performing an assignment for a supervising appraiser, must have the knowledge and experience to complete the assignment competently.

(3) All appraisal work completed by an appraiser assistant shall be prepared in compliance with USPAP and these administrative rules.

(4) An appraiser assistant may assist in the preparation of any and all components of the appraisal.

(5) An appraiser assistant may sign an appraisal report, provided their supervising appraiser co-signs the appraisal report and accepts full responsibility for the contents of the appraisal report.

(6) The extent of the assistance provided by an appraiser assistant to a supervising appraiser must be disclosed in the appraisal report as described in OAR 161-025-0025(3)(d).

(7) When inspecting a property, the appraiser assistant must not misrepresent their status and at all times clearly identify themselves as a registered appraiser assistant.

(8) The scope of practice for the appraiser assistant is the appraisal of those properties which the supervising appraiser is permitted to appraise.

(9) An appraiser assistant will only be granted experience credit if they have demonstrated that they have provided substantial professional real estate appraisal assistance in all categories of experience as outlined in OAR 161-025-0025(3)(a)(A) through (H).

(10) The appraiser assistant is entitled to obtain copies of any appraisal reports on which they provided professional real estate appraisal assistance.

(11) The appraiser assistant may have more than one supervising appraiser, each of whom must jointly maintain the appraisal experience log with the appraiser assistant to assure the log is accurate, current and complies with Oregon Administrative Rules. At a minimum, the appraisal log requirements shall include:

(a) Type of property;

(b) Date of Report;

(c) Address of appraised property;

(d) Description of work performed by the appraiser assistant and the scope of the review and supervision of the Supervisory Appraiser;

(e) Number of actual work hours by the appraiser assistant on the assignment; and

(f) The signature and state certification number of the supervisory appraiser.

(12) If the appraiser assistant subsequently adds or changes a supervising appraiser, the appraiser assistant must submit a Change or Add Supervising Appraiser form, signed by the new supervising appraiser(s) along with a copy of the Supervising Appraiser's Endorsement. Any experience gained with a new supervising appraiser prior to confirmation from the Board that the registration has been amended to include the new supervising appraiser(s) will not count as experience credit towards obtaining a real estate appraiser license or certificate.

(13) Appraiser Assistance Logs must be prepared and maintained as described in OAR 161-025-0025(3)(f)(B) and (C). Separate appraisal logs must be maintained for each supervising appraiser.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef.

4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-025-0060
Appraisal Standards and USPAP

(1) All licensees must develop and communicate each appraisal assignment in compliance with these administrative rules and USPAP.

(2) A licensee employed by a group or organization that conducts itself in a manner that does not conform to USPAP Standards must take steps that are appropriate under the circumstances to ensure compliance with the Standards.

(3) All licensees must certify to what extent they personally inspected the property that is the subject of the appraisal assignment. Each report must clearly state that the subject property was: inspected both inside and out; inspected from the exterior only; or was not personally inspected by the licensee.

(4) In addition to certifying as to the extent of the subject's inspection, all licensees must also certify to what extent each of the comparable sales relied upon in the appraisal were personally inspected.

(5) All licensees must disclose in all appraisal reports whether the comparable sales analyzed in the appraisal report were or were not confirmed by a party to the transaction or an agent or representative of a party to the transaction.

(6) All licensees testifying or presenting evidence in an administrative or judicial proceeding must base their testimony or evidence only upon a written appraisal report or restricted appraisal report in compliance with USPAP, reflecting a report date that precedes the date of testimony, unless such testimony is being compelled by legal subpoena.

(7) The "Uniform Standards of Professional Appraisal Practice", 2014-2015 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2014, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

(8) All licensees must list their certificate or license number and expiration date in each appraisal report.

(9) All licensees must comply with USPAP and all other applicable administrative rules in OAR Chapter 161 in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2) (h).

(10) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

(a) Board member;

(b) Employee; or

(c) Contractor or volunteer serving at the request of the Board.

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

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-89; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 4-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12; ACLB 5-2013, f. 10-29-13, cert. ef. 1-1-14; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14; ACLB 1-2014, f. & cert. ef. 4-22-14; ACLB 2-2014, f. & cert. ef. 5-20-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-030-0000
Criminal Background

(1) For the purposes of this section, "Subject Individual" means:

(a) Any licensee as defined in OAR 161-002-0000(22).

(b) Any applicant for a certificate, or registration under ORS Chapter 674 or any applicant for renewal of a license, certificate, or registration under ORS Chapter 674.

(c) Any Board employee, volunteer, or any other person the Board may require fingerprints for the purpose of conducting a state or nationwide criminal records check as identified in ORS 674.105.

(2) The purpose of this section is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are unfit to hold a license, certificate or registration, or work, volunteer or contract with the Board.

(3) The Board and a vendor for fingerprinting services ('fingerprint service provider") have contractually agreed that:

(a) The fingerprint service provider will provide electronic fingerprinting services to Oregon subject individuals and submit the fingerprints electronically to the Oregon Department of State Police to conduct statewide and nationwide criminal records checks through the Federal Bureau of Investigation.

(b) All Oregon subject individuals may only submit fingerprints required by the Board through the fingerprint services provider. All out of state subject individuals may submit a completed fingerprint card on the form prescribed by the Oregon State Police and FBI.

(c) The Board may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to the subject individual.

(4) The fingerprint card and processing fee shall be submitted to the Board prior to issuance of any license under ORS Chapter 674 and these rules.

(5) Within the Board, only an authorized designee shall have access to records the Board receives from the Oregon Department of State Police resulting from a criminal records check.

(6) The Board's authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the Board and the Oregon Department of State Police.

(7) Records the Board receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(8) If a fingerprint-based criminal records check was conducted on a subject individual, the Board shall permit that subject individual to inspect the state and federal criminal offender information and provide a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law.

(9) If the information developed by the Board indicates that additional information should be obtained from the subject individual, it will be the duty of the subject individual, upon notice and request by the Board, to provide the requested information in order to complete the background check. Information considered necessary by the Board to evaluate the subject individual's trustworthiness and competency to engage in professional real estate appraisal activity in a manner that protects the public interest. Failure to comply may result in a determination that the background check is incomplete which will result in an unfit determination by the Board.

(10) The Board shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which the criminal background check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the background check.

(11) A subject individual shall not be denied under this section on the basis of the existence or contents of a juvenile record that has been expunged under ORS 419A.260 and 419A.262.

(12) The Board shall inform the subject individual who has been determined unfit on the basis of a criminal background check, via courier, or registered or certified mail to the most current address provided by the subject individual of the disqualification. Responsibility for furnishing a current address remains with the subject individual.

(13) A disqualification determination is a final order of the Board unless the affected subject individual requests a contested case hearing under ORS Chapter 183 within 20 days of the mailing of the determination.

Stat. Auth.: ORS 674.170, 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2011, f. 11-17-2011, cert. ef. 1-1-12; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-040-0000
Inactive Status

(1) A certified or licensed appraiser may, upon compliance with the provisions of this section, transfer his or her license or certificate from active to inactive status.

(2) The appraiser shall submit a written request to the Board on a form prescribed by the Board, that he or she desires to be placed on inactive status and shall accompany the request with the appropriate fee and required continuing education.

(3) The Board shall, promptly after receipt of such request, provide written notice to the applicant that the applicant has been placed on inactive status.

(4) The applicant for inactive status shall not sign or issue any appraisal reports on or after the date he or she submits a request for conversion to inactive status to the Board

(5) A person of inactive status may convert to active status as a state certified or state licensed appraiser, as applicable, upon submission of a renewal application, on a form prescribed by the Board, and upon that person's submission of all information required by that form and payment of the appropriate fees.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-050-0000
Temporary Non-Resident Registration of Out-of-State Appraisers

(1) The Board will recognize temporarily the license or certificate of an appraiser issued by another state if:

(a) The appraiser is a non-resident of Oregon;

(b) The appraiser's business is of a temporary nature; and

(c) The appraiser registers with the Board.

(2) Any out-of-state appraiser desiring to conduct real estate appraisal activity within the State of Oregon, must submit an application for temporary registration on a form prescribed by the Board. The application must include:

(a) The required registration fee, and

(b) An irrevocable consent to service form appointing the Board Administrator as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(3) The Board will obtain a National Registry License History Report for possible disciplinary actions. Alternatively, the Board may request the applicant to request a license history from the applicant's resident state indicating applicant is currently in good standing. This verification must be submitted directly to the Board office by the applicant's resident state licensing authority. The license history must be received by the Board within 30 days.

(4) The non-resident registration is only valid for a single appraisal assignment within the state.

(5) A single appraisal assignment may include one or more properties under one contract for a single client.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-530-0020
Background Check Authorizations and Fingerprint Card

(1) The background check includes a criminal background check and a criminal records request as provided in OAR Chapter 161, Division 520. The subject individual must apply for the background check in writing on a form approved by the Board with all information provided and certified by the subject individual.

(2) The Board and a vendor for fingerprinting services ("fingerprint service provider") have contractually agreed that:

(a) The fingerprint service provider will provide electronic fingerprinting services to Oregon subject individuals and submit the fingerprints electronically to the Oregon Department of State Police to conduct statewide and nationwide criminal records checks though the Federal Bureau of Investigation.

(b) All Oregon subject individuals may only submit fingerprints required by the Board through the fingerprint service provider. All other out of state subject individuals must submit one completed fingerprint card, prescribed by the Federal Bureau of Investigation and completed by a law enforcement agency or a commercial fingerprinting entity.

(3) The background check shall include, but is not limited to, the following:

(a) Legal name, residence physical and mailing address, telephone numbers and email address;

(b) Place and date of birth;

(c) Social security number;

(d) Driver's license or identification card number and state of issue;

(e) Whether the subject individual has:

(A) EVER entered a plea of nolo contendere, plead or been found guilty of or convicted of a felony;

(B) In the past ten years entered a plea of nolo contendere, plead or been found guilty of, or convicted of, a misdemeanor;

(C) EVER been reprimanded or fined or had a license, certificate or registration suspended, revoked, restricted, denied or surrendered in this or any other state by any agency that has granted a license, certificate or registration to engage in a regulated occupation, trade or profession;

(D) An entry of any money judgments that have not been paid in full;

(E) Filed for voluntary or involuntary bankruptcy protection during the past ten years; and

(F) Any other information the Board considers necessary to evaluate the moral character of the subject individual.

Stat. Auth.: ORS 183.355, 674.305(7), 674.310 & 2011 OL Ch. 447
Stats. Implemented: ORS 674.310 & 2011 OL Ch. 447
Hist.: ACLB 5-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

161-570-0030
Complaints, Investigations and Audits

(1) A notice of investigation, together with a true copy of the allegation report as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of each controlling person of the appraisal management company. Unless otherwise specified in the notice of investigation, a controlling person must produce:

(a) True copies of records within 30 days. No extension will be granted; and

(b) Within 30 days, a written response to the allegations set forth in the allegation report.

(A) A controlling person may request an extension to file a response to a notice of investigation. An extension of up to 30 days will be approved provided the extension request is submitted in writing to the Administrator within the 30 day time period. Good cause must exist that shows circumstances beyond the reasonable control of a controlling person preventing a response within 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(2) The investigation may include all inquiries deemed appropriate to ensure that each case is processed in accordance with ORS Chapter 183.

(3) The Board may initiate an audit or other type of inquiry or investigation to verify an appraisal management company's compliance with ORS 674 and OAR 161.

(4) Every controlling person or subject individual of an appraisal management company must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of the appraisal management company's registration, imposition of a civil penalty, or denial of a registration, or any combination thereof.

(5) At the completion of the investigation process, the Enforcement Oversight Committee shall review the allegation report and documents related to the investigation. If the Enforcement Oversight Committee determines that an objective basis exists to believe that violations of ORS Chapter 674 and/or OAR chapter 161 occurred, the Enforcement Oversight Committee may authorize the Administrator to proceed with disciplinary actions.

(6) Shall submit a report to the Board setting forth specific violations along with the facts supporting the Committee's recommendation.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14; ACLB 1-2014, f. & cert. ef. 4-22-14; ACLB 2-2014, f. & cert. ef. 5-20-14; ACLB 5-2014, f. 12-19-14, cert. ef. 1-1-15

Board of Licensed Social Workers
Chapter 877

Rule Caption: Adoption of new and amended administrative rules regulating the profession of social work.
Adm. Order No.: BLSW 2-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 877-015-0106
Rules Amended: 877-001-0006, 877-020-0000, 877-020-0010, 877-020-0012, 877-020-0057, 877-020-0060
Subject: OAR 877-015-0106 would implement new definitions for "practice of baccalaureate social work" and "practice of master's social work," which were enacted during the 2013 Legislative Assembly in HB 2082.

OAR 877-001-0006 would implement new definitions for social work, which were enacted during the 2013 Legislative Assembly in HB 2082, including the definition of "clinical social work" to include reference to the Diagnostic and Statistical Manual of Mental Disorders (DSM) 5th edition.

OAR 877-020-0000 would amend the definition of "agency" for purposes of expanding the options for social work associates to obtain appropriate supervision.

OAR 877-020-0010 would permit social work associates to obtain required supervision via electronic media, increasing opportunities for associates located in rural and less populated areas of the state; the amendments would also permit social work associates to extend the supervision period beyond 5 years in certain circumstances.

OAR 877-020-0012 would establish standards for electronic media supervision.

OAR 877-020-0057 would create a new license status for individuals who do not renew their licenses within the 30 day grace period following their renewal date. The amendment would designate the licenses of such individuals as lapsed, and would allow lapsed licenses to be renewed by completing the renewal form, submitting any required continuing education and paying renewal and late fees. After one year from the renewal date, a lapsed license would expire. The proposed amendment would also allow the board to extend the lapsed period beyond one year upon a showing of "good cause" and "exceptional circumstances."

OAR 877-020-0060 would permit the board to reduce requirements for applicants on a showing of good cause.
Rules Coordinator: Randy Harnisch—(503) 373-1163

877-001-0006
Definitions

(1) "Authorization to practice regulated social work" is defined in ORS 675.510 as a certificate or license issued by the State Board of Licensed Social Workers under 675.510 to 675.600.

(2) "Regulated social worker" is defined in ORS 675.510 as a baccalaureate social worker registered under 675.532, a master's social worker licensed under 675.533, a clinical social work associate certified under 675.537, or a clinical social worker licensed under 675.530.

(3) The term "board" in OAR chapter 877 means the State Board of Licensed Social Workers established by ORS 675.590, unless otherwise specified.

(4) "Clinical social work" means:

(a) A specialty within the practice of master's social work that requires the application of specialized clinical knowledge and advance clinical skills to the assessment, diagnosis or treatment of mental, emotional or behavioral disorders or conditions, including but not limited to those identified in the Diagnostic and Statistical Manual of Mental Disorders (DSM) fifth edition; and

(b) The application of services described in paragraph (a) of this subsection to the provision of individual, marital, couples, family or group counseling or psychotherapy.

(5) "Clinical supervision" means an interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

(6) "Clinical social worker" means a person who practices clinical social work.

(7) "Practice of social work" means the application of social work theory, knowledge, methods and ethics to restore or enhance social, psychosocial or biopsychosocial functioning of an individual, couples, families, children, groups, organizations or communities, and may include private practice, administration, the provision of clinical supervision and teaching.

(8) For purposes of subsection (7) of this rule, "teaching" means providing instruction to one or more students in an academic or instructional setting by using one of the principles and methods listed in subsection (7) of this rule, but does not include the use of such teaching tools as role plays, process recordings, case discussions, or video or audio tapes of client interactions that do not involve providing mental health services to a live client in the class room setting.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177(2009) & HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994 & 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-015-0106
Definitions

(1) "Practice of baccalaureate social work" means the basic, generalist practice of social work that includes assessment, planning, intervention, evaluation, case management, information and referral, counseling, nonclinical supervision, consultation, education, advocacy, community organization, and the development, implementation and administration of policies, programs or activities.

(2) "Practice of master's social work" means social work characterized by the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation or evaluation, case management or referral, counseling, nonclinical supervision, consultation, education, research, advocacy, community organization, or the development, implementation or administration or policies, programs or activities.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-020-0000
Definitions

An "agency" is a private or public organization that, through its employees, engages in clinical social work (defined in ORS 675.510 (2)) generally characterized by the following:

(1) Cases are assigned through a central process;

(2) Billing is centralized and done in the organization's name;

(3) The organization collects all fees including deductibles and copayments;

(4) The organization controls client records and is responsible for their proper storage and destruction;

(5) The organization displays its name on the premises so as to be clearly visible to clients;

(6) The name of the organization is on all forms given to the client;

(7) The organization maintains the responsibilities for hiring and firing of staff;

(8) Supervision of clinical social work associates is provided on a regular basis; and

(9) Policies and procedures of the organization are available in written form for the staff and clients.

Stat. Auth.: ORS 675.510 — 675.600 & 675.990
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-020-0010
Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(4)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(4)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The board may, at their discretion, approve a written request to extend a plan of supervision beyond the 60 month period. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, the associate must continue to meet at least once each month with a plan supervisor for a minimum of one hour.

(c) Supervision required in this rule must be accomplished:

(A) In person, in a professional setting; or

(B) by electronic video-conferencing media, provided that the first and final supervisory sessions and at least one supervisory session each quarter be conducted in person pursuant to subsection (A) above.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) The associate must pass the national examination required by OAR 877-020-0008.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-020-0012
Requirements of Supervision

(1) Qualifications of supervisor.

(a) The supervisor of the associate must be a licensed clinical social worker, approved by the board at the time the applicant submits the plan of practice and supervision for approval, unless the associate works more than 50 miles from the nearest licensed clinical social worker able to serve as supervisor of the associate. In this event, upon request of the associate, the board may authorize a supervisor who is one of the following:

(A) A clinical psychologist licensed in Oregon, a psychiatrist licensed in Oregon, or a person similarly qualified.

(B) A person who meets the following requirements for licensure but has not been licensed by the board:

(i) The educational requirement in OAR 877-020-0009(2).

(ii) Field experience requirement described in OAR 877-020-0009(3).

(b) The supervisor of the associate:

(A) Must have completed two years of licensed practice.

(B) Must have completed and reported to the board at least six hours of continuing education hours described in OAR 877-025-0006(1) or (2) in techniques of supervision within five years prior to commencing the supervision of an associate.

(2) Requirements of the supervision.

(a) The associate may have one supervisor for individual supervision and a different supervisor for group supervision.

(b) The relationship between the supervisor and the associate must be of a professional nature, and the ethical standards for social workers, including standards contained in this division of rules, are applicable to each of them.

(c) The supervisor must have the authority to direct the caseload and treatment plans of the associate.

(d) In order that the goals of the supervision are reached:

(A) The supervisor and associate are expected to discuss cases with each other based on case notes, charts, records, and audio or visual tapes of clients, if available.

(B) The associate must present to the supervisor assessments, diagnoses, and treatment plans of clients seen by the associate.

(C) The treatment plans presented by the associate must be appropriate, and the supervisor must focus on the therapeutic skill of the associate in promoting change in the client.

(D) The supervisor must have the authority to determine the appropriateness of the associate's client population to the associate's level of expertise.

(e) A licensed clinical social worker or other person authorized by the board who agrees to supervise an associate must:

(A) Submit to the board at intervals not to exceed six months an evaluation of the associate's progress toward completion of the plan, on a form provided by the board.

(B) Report to the board in writing immediately in the event the associate is not complying with the plan of practice and supervision.

(C) Report to the board in writing immediately in the event the relationship between the supervisor and the associate ends earlier than the date provided for in the Plan.

(D) Make other reports as required by the board.

(f) Clinical social workers who participate in supervision that is conducted by electronic video-conferencing media must:

(A) Ensure that clients whose records may be discussed as a part of the supervision provide written consent to having confidential records and information transmitted electronically;

(B) Conduct the video-conference in a setting and in a manner that protects the privacy of both parties; and

(C) Utilize secure transmittal methods, (encryption, for example) to maintain confidentiality of the information.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-020-0057
Lapsed and Expired Licenses and Certificates

(1) A license or certificate that is not renewed by the end of the 30th day following the renewal date is lapsed.

(2) A lapsed license or certificate may be renewed by submitting:

(a) The completed renewal application;

(b) Payment of appropriate fees, including late fees, pursuant to OAR 877-001-0020;

(c) Documentation of having completed all required continuing education requirements; and

(d) A certification on a form provided by the board that the person while in lapsed status has not engaged in the practice of clinical social work nor used any title, words, or abbreviations, including the title of "social worker," that indicates the person has an authorization to practice regulated social work.

(3) A license or certificate that has lapsed and is not renewed pursuant to subsection of this rule by the end of one year following the renewal date plus any extended time period granted by the board pursuant to subsection (6) of this rule is expired.

(4) A person whose license or certificate has expired may apply to the board to receive a new license or certificate.

(5) To be eligible for a new license, an applicant whose license has expired:

(a) Must meet the degree requirements in OAR 877-020-0009(2);

(b) Must meet the fitness requirements in OAR 877-020-0008(2) and is subject to the provisions of 877-022-0005 as an applicant for a license;

(c) Must have passed the national examination described in OAR 877-020-0008(4) and (5)(b);

(d) May be subject to requirements of the board, determined on an individual basis, to work under a plan of practice and supervision designed to take into account the experience of the applicant, recent practice of the applicant, and other factors that pertain to the applicant;

(e) May be subject to requirements of the board, determined on an individual basis, to complete continuing education in specified topics; and

(f) Must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(4) and (5)(a).

(6) The board may in the board's sole discretion extend the time period that a license or certificate may be in lapsed status upon written request showing good cause based on exceptional circumstances.

(7) For the purposes of subsection (6) of this rule: "good cause" means situations that are beyond the reasonable control of the licensee or certificate holder and "exceptional circumstances" means unforeseen circumstances that are of a very serious nature including, for example, the serious illness of the licensee or certificate holder. "Good cause" for purposes of subsection (6) of this rule does not include situations where the action, delay, or failure to act by the licensee or certificate holder arises from mistake, neglect, reliance on a statement of board staff, lack of knowledge or understanding of the board's statutes or rules, noncompliance with the board's statutes or rules, or any circumstance that is within the reasonable control of the licensee or certificate holder.

(8) A person with a lapsed or expired license may not practice clinical social work nor use any title, words or abbreviations, including the title "social worker," that indicate that the person has an authorization to practice regulated social work .

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 1-2014(Temp), f. & cert. ef. 8-1-14 thru 1-27-15; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

877-020-0060
Reduced Requirements

(1) A person described in section (2) of this rule is subject, upon written request submitted to and approved by the board, to the following requirements for continuing education and renewal fees:

(a) Continuing education:

(A) The number of hours required by OAR 877-025-0011(1) is reduced to 20.

(B) Continuing education described in OAR 877-025-0006(1) or (6) only is authorized.

(C) Carryover of hours, addressed in OAR 877-025-0016(4), is not authorized.

(D) This rule does not change the continuing education hours required for a supervisor or the continuing education requirement for ethics training.

(b) The fee for renewal of a license, described in OAR 877-001-0020, is reduced by half.

(2) The requirements described in section (1) of this rule are applicable to a licensed clinical social worker who:

(a) Has practiced clinical social work under the authority of a license for twenty years;

(b) Has not been disciplined by a licensing authority during the prior 15 years of social work practice; and

(c) Engages in the practice of social work for not more than 500 hours a year.

(3) A person subject to the provisions of section (1) of this rule may not apply for an inactive license.

(4) The board retains the authority to reduce the requirement set out in section (2)(a) above upon request from an applicant and on a showing of good cause. For example, the board may reduce the number of years that a licensed clinical social worker must have practiced to qualify for reduced fees under this rule upon a showing that the licensee began his or her career later in life.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 2-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15

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Board of Optometry
Chapter 852

Rule Caption: Revisions governing optometry for clarity, changes in standards of practice and agency budget.
Adm. Order No.: OPT 3-2014
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Certified to be Effective: 1-1-15
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Subject: Refiling due to filing error.

Overall: Adopt revised 2013-15 agency budget; streamlining of regulatory processes; clarification of unprofessional conduct; delete requirement for in-person continuing education.

Division 5:

0005: Enters the total limitation approved by the Board for the 2013-15 Biennium.

Division 10:

0005: Sets framework for Board elections, per statute.

0015: Removes specific fee and refers to fee list at 852-010-0080.

0020: Makes reporting entity name change to "National Practitioner Data Bank."

0023: Removes specific fee and refers to fee list at 852-010-0080.

0024: Adds provisions for expedited licensure for active-duty military spouses and domestic partners as required in ORS 342.195.

0051: Clarifies recordkeeping requirements and transfer upon permanent disability; clarifies requirement for written request or release form.

0080: Adds requirement for phone number of record for licensees to requirement of address of record; clarifies that examination fee is only for those administered by the Board.

Division 20:

0029: Allows use of stamped signature.

0031: Defines when a prescription is deemed to be officially signed and allows delegation of release for subsequent copies.

0035: Clarifies that all drugs dispensed must follow Oregon Board of Pharmacy rules.

0060: Prohibits optometric physicians from entering into specific agreements; defines "direct supervision" and provisions for delegation of the duties of an optometrist.

Division 50

0001: Adds requirement for reporting a telephone number of record and provisions to request exemption from disclosure. Removes specific fee and refers to fee list at 852-010-0080.

0005: Clarifies pharmaceutical certification.

0006: Clarifies timeliness of renewals sent to the Board's mailing address, and responsibility of licensee. Removes specific fees and refers to fee list at 852-010-0080.

0012: Allows optometric physicians to convert active licenses to inactive status between renewals at no charge. Clarifies timeliness of renewals sent to the Board's mailing address. Clarifies address to be printed on license. Removes outdated provision of charging reactivation fee only within one year. Removes specific fee and refers to fee list at 852-010-0080.

0013: Clarifies no license renewal fees will be assessed for active-duty military.

0014: Clarifies reinstatement following license surrender and status of investigations and discipline. Requires request to be made in writing. Removes specific fee and refers to fee list at 852-010-0080.

0016: Removes specific fee and refers to fee list at 852-010-0080.

0018: Requires telephone number of record and makes provisions to hold confidential from disclosure. Allows mailing addresses when different from practice locations. Removes specific fee and refers to fee list at 852-010-0080.

0021: Allows optometric physicians to use portable multiple practice location license in nonprofit services.

0025: Removes requirement to provide information on a prescribed form; clarifies use of sources for criminal background checks. Removes requirement for recommendations of an employer; allows Board to request additional information.

Division 60:

0025: Clarifies requirement to report adverse actions within 10 calendar days. Adds failing to report suspected misconduct as required by statute

0027: Clarifies unprofessional conduct to include: any conduct or practice contrary to recognized standards, misrepresentation to patients, the Board or an agent of the Board; willful deception; violations of ORS 676.110(5) regarding use of titles; clarifies improper delegation of duties; adds mind-altering substances to list of abused substances; records requirement failures; violating patient privacy or confidentiality; obstruction and harassment; failure to cooperate under terms of confidentiality agreements; limiting ability of person to file a complaint or answer questions of the Board; failure to timely report own or suspected misconduct.

Division 70

0010: Add statutory language on purpose of continuing education. Removes limit on non-live CE hours allowed. Allows cultural competency continuing education to be credited.

0016: Clarifies language.

0020: Removes obsolete provision regarding communication skills, now included under cultural competency.

0025: Changes term "eligible" to "approved."

0030: Clarifies when new licensees are required to submit continuing education.

0035: Removes specific fee and refers to fee list at 852-010-0080.

0055: Clarifies that Board review of continuing education proposals take at least 30 days; licensees may not submit CE that has not yet been approved.

Division 80

0040: Removes obsolete provisions for TPA certification. Removes specific fee and refers to fee list at 852-010-0080. Clarifies requirements for certifications. Clarifies that only initial licensing requires CPR certification with a hands-on component.

Rules Coordinator: Nancy DeSouza—(503) 399-0662, ext. 23

852-005-0005
Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2011–2013 Biennium Budget of $698,511 covering the period from July 1, 2013 through June 30, 2015. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of $698,511 for the effective operation of the Board. The Board will not exceed the approved 2013–2015 Biennium budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 182.462(1) & (2)
Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0005
Board Meeting

(1) The Board must hold regular meetings at least once each year at such time and place as the Board may designate. Notice of the time and place of regularly scheduled, special and emergency meetings will be given to the individuals on the Board's distribution list.

(2) A majority of the total number of the Board constitutes a quorum for the transaction of business. However, an affirmative vote of the majority of the total number of Board members is necessary to make a Board decision.

(3) The President is authorized to take action between Board meetings, such as reactivation of licenses, interpretation of policy or procedure, or other such items, subject to ratification by the Board. The Board may delegate such authority to the Executive Director. All such actions must be noted in the agenda for the next meeting of the Board and be presented for ratification in the order of business at that meeting.

(4) The Vice-President of the Board may carry out the functions of the president when the president is unable to perform the required duties.

(5) The Board shall elect from its membership the President and Vice-President annually at its first regularly scheduled meeting of the calendar year.

Stat. Auth.: ORS 683 & 676
Stats. Implemented: ORS 683.270 & 676.306
Hist.: OE 2, f. 12-5-57; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0015
Application for Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant will be accepted for examination and licensure.

(2) Applications for licensure as an optometric physician in Oregon must be directed to the office of the Board.

(3) The application is complete upon receipt by the Board of:

(a) A signed application form;

(b) A copy of the official final transcript from an accredited college of optometry indicating receipt of the doctor of optometry degree;

(c) A copy of the record establishing satisfactory completion of a course in pharmacology as it applies to optometry from an institution approved under ORS 683.040(2) when applicable;

(d) Verification of the passage of the examination of the National Board of Examiners in Optometry (NBEO);

(e) Receipt by the Board's office of the application fee as listed in OAR 852-010-0080;

(f) Written confirmation sent directly from the licensing entity of each other state in which the candidate has ever been licensed that the candidate for licensure has not been sanctioned for violating the laws, rules and standards of ethics of that jurisdiction;

(g) Documentation of completion of the required continuing optometric education;

(h) Documentation of current CPR certification, as required in OAR 852-080-0040;

(i) Proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(j) Proof of passage of the Oregon optometric law and administrative rules examination; and

(k) Satisfactory results of a criminal records background check as defined in OAR 852-050-0025.

(4) Any application received from an optometrist who has been sanctioned by another optometric licensing jurisdiction is individually reviewed and considered by the Board.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.060, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1994, f. & cert. ef. 7-22-94; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0020
Rules for Examination and Licensure

(1) Pursuant to ORS 683.060(2), the Board will require a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination. NBEO standards for passing the NBEO examination are acceptable to the Board.

(2) The applicant for examination and licensure must:

(a) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(b) Submit documentation of continuing education hours as required in OAR 852 division 70;

(c) Pass, by a score of 80 of better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months before date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination.

(3) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.060, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 8, f. 4-23-71, ef. 5-25-71; OE 2-1979, f. & ef. 10-29-79; OE 2-1984, f. & ef. 7-14-84; OE 1-1985, f. & ef. 7-9-85; OP 1-1987, f. & ef. 4-30-87; OP l2-1988(Temp), f. & cert. ef. 8-30-89; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 6-1998, f. 12-28-98, cert. ef. 1-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0023
Rules for Endorsement Examination and Licensure

Pursuant to ORS 683.220 the Board may grant to an applicant a license by endorsement for the practice of optometry if the applicant:

(1) Holds a license for the practice of optometry obtained by examination in another state in the United States;

(2) Has been continuously engaged in the practice of optometry for not less than two years immediately preceding the application to the Board;

(3) Has educational qualifications the Board considers equivalent to the educational requirements necessary for licensing by the Board at the time the applicant commenced the practice of optometry. The educational requirements include a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination or its equivalent, as determined by the Board. NBEO standards for passing the NBEO examination are acceptable to the Board;

(4) Submits documentation satisfactory to the Board of continuing optometric education hours equivalent to the requirements established by OAR 852-070;

(5) Provides written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure by endorsement;

(6) Pays the licensure by endorsement application fee as listed in OAR 852-010-0080; and

(7) Passes, by a score of 80 or better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months previous to date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination;

(8) Provides proof of meeting the requirements of OAR 852 division 80 — Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(9) Receive satisfactory results of a criminal records background check as defined in OAR 852-050-0025;

(10) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.220, 683.270 & 182.466
Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0024
Military Spouse and Domestic Partner Licensure

(1) Regardless of pathway to licensure, if the applicant is the spouse or legal domestic partner of an active service military member who is the subject of a military transfer to Oregon, the Board may issue a temporary license for up to 90 calendar days pending receipt of required good standing status confirmations, if the applicant:

(a) Meets all other requirements for licensure as stated in OAR 852-010-0015;

(b) Attests to being in good standing, with no restrictions or limitations upon, actions taken against, or investigation or disciplinary action pending against his or her license in any jurisdiction where the applicant is or has ever been licensed;

(c) The Board's review of the other jurisdictions' licensing websites and the National Practitioner Data Bank confirm no disciplinary action; and

(d) The military spouse or domestic partner submits a copy of the marriage certificate or domestic partnership registration with the name of the applicant and the name of the active duty member of the Armed Forces of the United States and proof of assignment to a duty station located in Oregon by official active duty military order for the spouse or domestic partner named in the marriage certificate or domestic partnership registration.

(2) Failure of the applicant to provide confirmation(s) required within 90 days results in automatic expiration of the temporary license. Applicant may not be reissued a temporary license.

(3) A regular license will be issued upon receipt of required status confirmation(s).

Stat. Auth.: ORS 683.040, 683.060, 683.270 & HB 2037 (2013)
Stats. Implemented: ORS 683.040, 683.060, 683.270 & HB 2037 (2013)
Hist.: OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0051
Records

(1) Optometric physicians must keep complete and accurate records for each patient, including, but not limited to, case histories, examinations, diagnostic and therapeutic services, prescriptions, instructions for home therapies, referral recommendations and any other information required to make the record complete. Patient records must be sufficiently detailed and legible so that an appropriate provider could continue care without requiring additional information and without detriment to the patient. It is unprofessional conduct to keep incomplete or inaccurate records for a patient.

(2) Retention Schedule: A patient's records must be kept in an accessible print or electronic format. The records must be controlled by an Oregon-licensed optometric physician and kept for a minimum of seven years from the date of the last office visit or pertinent clinical notation on the record. If a patient is a minor, the records must be kept seven years or until the patient is 21 years of age, whichever is longer.

(3) When changing practice locations, closing a practice location or retiring, an optometric physician must retain patient records for the required amount of time or transfer the custody of patient records to a doctor of optometry licensed and practicing optometry in Oregon. Transfer of patient records pursuant to this section of this rule must be reported to the Board in writing within 14 days of transfer, but not later than the effective date of the change in practice location, closure of the practice location or retirement. It is unprofessional conduct for a doctor of optometry not to retain and release patient records or fail to transfer the custody of patient records as required in this rule.

(4) Upon the death or permanent disability of an optometric physician, the administrator, executor, personal representative, guardian, conservator or receiver of the former optometrist must notify the Board in writing of the management arrangement for the custody and transfer of patient records. This individual must ensure the security of and access to patient records by the patient or other authorized party, and must report arrangements for permanent custody of patient records to the Board in writing within 90 days. Transfer of patient records to another Oregon-licensed optometric physician must occur within one year of the death or permanent disability of the optometric physician.

(5) Optometric physicians must provide copies of records or detailed summaries of records within 14 calendar days of the written request of the patient or by a person holding a valid release from the patient (a recommended sample release form is provided in ORS 192.566). The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution.

(6) Optometric records do not include personal office notes of the optometric physician or personal communications between referring or consulting physicians.

(7) Optometric physicians must preserve a patient's records from unauthorized disclosure and may release them only as authorized by federal and state laws and rules.

(8) Optometric physicians may establish reasonable charges to patients for copies of their records and for faxing prescriptions by long distance phone services, or for any unusual mailing or handling costs per ORS 192.521

(9) Optometric physicians must release copies of patient prescriptions without additional charges and may not withhold release of patient records or additional copies of prescriptions for lack of payment for prior services or goods.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140 & 683.270, 182.466
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1995, f. 10-31-95, cert. ef. 11-1-95; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-010-0080
Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(1) Active license:

(a) Annual renewal — $323, of which $298 is for the active optometry license and $25 is the Prescription Drug Monitoring Fund fee collected by the licensing body on behalf of the Oregon Health Authority.

(b) Additional copy of Portable Multiple Practice Location license — $25 each.

(c) Failure to meet renewal date: Late renewal fee — $50 first failure, $75 second failure, $100 any subsequent failure in a seven-year period.

(d) Lapse in CPR certification during licensing period — $50.

(e) Failure to notify the Board of practice locations or address or phone number of record — $50 first failure, $100 second failure, $200 any subsequent failure(s) in a seven-year period.

(3) Inactive License:

(a) Annual renewal — $98.

(b) Late renewal fee — $15.

(c) Failure to notify the Board of address or phone number of record — $50 first failure, $100 second failure, $200 subsequent failure(s) in any seven-year period.

(4) Application for Licensure:

(a) Application for Examination and Licensure — $200.

(b) Application for Endorsement Examination and Licensure — $300.

(c) Application for TPA Certification — $75.

(d) Law and Administrative Rule Examination administered by the Board — $75.

(5) Other fees:

(a) Written official license verification — $20.

(b) List of licensees (electronic or printed) — $25 each Active/Inactive.

(c) Reactivation of license — $100.

(d) Reinstatement of license — $100.

(e) Law and Administrative Rules booklet — $25 (available online at no charge).

(f) Decorative Wall Certificate of Registration (optional, personalized and signed by Board) — $30.

(6) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, or other person or entity has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683, 182 & 431
Stats. Implemented: ORS 683.270, 182.466 & 431.972
Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-020-0029
Prescription Content

(1) Prescription specifications must be reasonably based on the patient's vision and eye health concerns and must include all information required to ensure the patient receives the designated ophthalmic products.

(2) Spectacle prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) Optometric physician's name, license number, practice location address, telephone number and facsimile (fax) number and handwritten, stamped or electronic signature. If using another doctor's printed or electronic prescription form, the prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(e) Sphere, Cylinder, Axis and/or ADD;

(f) Any special features, which may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish; and

(g) A reasonable and clinically-prudent expiration date.

(3) Contact lens prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) A reasonable and clinically-prudent expiration date;

(e) Optometric physician's s name, license number, practice location address, telephone number and facsimile (fax) number, and handwritten, stamped or electronic signature. If using another doctor's printed or electronic prescription form, the prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(f) Sphere, Cylinder, Axis and/or ADD;

(g) Lens base curve or series;

(h) Lens diameter, if applicable;

(i) Lens material and/or brand name;

(j) Any special features that may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish;

(k) The maximum number of refills, if specified by the optometric physician. If specified, the contact lens prescription becomes invalid upon the patient's ordering of the maximum number of refills, unless extended by the optometrist. The quantity of lenses or refills specified in the prescription must be sufficient to last through the prescription's expiration date. If a lesser quantity of lenses or refills is specified in the prescription, the prescriber must have a legitimate medical reason for doing so, and the Federal Trade Commission requirements on writing a prescription for less than one year must be met; and

(l) Any limitations, including wearing schedule and follow-up care.

(4) Contact lens prescriptions must be written in a manner that allows the patient to have the prescription filled by an office or outlet of their choice.

(5) A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with an equivalent contact lens manufactured by that company under another label.

(6) Therapeutic pharmaceutical prescriptions must conform to the administrative rules of the Oregon Board of Pharmacy regarding prescription format.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 182.466, 683.010(2), 683.030(3) & 683.335
Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-020-0031
Prescription Release

(1) An optometric physician must immediately give the signed written prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination, even if the patient does not request the prescription.

(2) Upon direct communication from the patient or anyone designated to act on behalf of the patient, an optometric physician must release or verify the patient's prescription to a third party.

(3) The prescription is deemed to be officially signed when first issued to the patient. If the examining optometric physician wishes to delegate signature authority for subsequent copies of a valid spectacle or contact lens prescription, exact copies may be dispensed by a designee following the doctor's written policy for ensuring prescription validity. Under no circumstances may an optometric physician delegate authority to alter the prescription, its expiration date or the number of refills for contact lenses.

(4) If a patient has not completed a contact lens fitting, the prescription released need only meet the spectacle prescription requirements.

(5) As used in this section, the term "direct communication" includes communication in person, by telephone, facsimile (fax), mail or electronic mail.

(6) An optometric physician may not:

(a) Require purchase of contact lenses or spectacles from any party as a condition of providing a copy of the prescription or verification of the prescription;

(b) Require payment in addition to or as a part of the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription; or

(c) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010, 683.335 & 182.466
Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-020-0035
Prescribing

(1) An optometric physician may use, prescribe, dispense or administer controlled substances in Schedules III-V only to a person with whom the doctor has a bona fide physician-patient relationship.

(2) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to himself/herself.

(3) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to an immediate family member except in emergency situations. "Immediate family member" means spouse, domestic partner, child, stepchild, sibling, parent, in-law or other individual for whom an optometric physician's personal or emotional involvement may render the doctor unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

(4) It is unprofessional conduct for an optometric physician to use, prescribe, dispense or administer controlled substances in Schedules III-V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(5) All drugs dispensed by an optometric physician must follow all applicable Oregon Board of Pharmacy rules governing dispensing. All dispensed drugs must be labeled with the following information:

(a) Name, address and telephone number of the optometric physician;

(b) Date;

(c) Name of patient for which the drug is dispensed;

(d) Name of the drug, strength, the quantity dispensed. When a generic name is used, the label must also contain the name of the manufacturer or distributor;

(e) Direction for use;

(f) Required precautionary information;

(g) Such other and further accessory cautionary information as required for patient safety; and

(h) An expiration date after which the patient should not use the drug. Expiration dates on drugs dispensed must be the same as that on the original container unless, in the optometric physician's professional judgment, a shorter expiration date is warranted. Any drug bearing an expiration date may not be dispensed beyond the said expiration date of the drug.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k), 182.466 & 689.225
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-14; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-020-0060
Optometric Physician Responsibility, Supervision, and Delegation

(1) The optometric physician carries the sole responsibility for the patient's care. Delegation of duties does not discharge an optometric physician's responsibility for the accuracy and completeness of the work delegated.

(2) An optometric physician may delegate tasks that are not prohibited to well-trained technicians who are under the direct supervision of an optometric physician or medical doctor actively practicing at that location.

(3) No optometric physician may enter into a contract, lease agreement or other agreement that requires the optometric physician to delegate the allowed tasks of an optometrist to a technician who is not under direct supervision.

(4) Direct supervision as used in ORS 683.030 means the technician's activities are overseen and approved by an optometric physician or medical doctor at the practice site who retains the responsibility for patient care and with an appropriate intervention protocol in place. The delegating optometrist must have authority to remove that technician from patient contact at any time.

(5) An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, or final determination of any prescription or treatment plans.

(6) An optometric physician may not delegate final tonometry for a patient who has glaucoma.

(7) Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.010(2), 683.030(3) & 182.466
Hist.: OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0001
License Required

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

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

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

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

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

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270
Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0005
License and Certificate of Registration

(1) Upon becoming authorized to practice Optometry in Oregon, the licensee will receive:

(a) One original license, printed with and valid only at the address of the reported primary practice location. This current original license must be displayed in plain sight at the primary practice location where it can be viewed by any patient; and

(b) One Portable Multiple Practice Location license, printed with the reported primary practice location address, which may be used to practice at an unlimited number of additional reported practice locations. A Board-issued Portable Multiple Practice Location license must be displayed in plain sight at each non-primary practice location in an area where it can be viewed by any patient. Optometric physicians who wish not to transport this portable license among locations may purchase additional copies of the Portable Multiple Practice Location license from the Board.

(2) The licensee's status (active or inactive, and pharmaceutical certification) is printed by the Board on each license.

(3) The licensee must notify the Board of each practice location before commencing work at that location.

(4) While practicing at any location, a current license must be displayed in plain sight at all times in an area where it can be viewed by any patient.

(5) Photocopies of licenses are void and may not be displayed.

(6) The original license and all Portable Multiple Practice Location licenses expire and must be renewed during the annual license renewal period.

(7) Any optometric physician actively licensed to practice in Oregon may purchase an optional decorative wall certificate of registration personalized and signed by the Board.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OE 11, f. 5-19-72, ef. 6-1-72; OE 14, f. 2-20-73, ef. 3-1-73; OE 2-1980, f. 12-23-80, ef. 12-29-80; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1994, f. & cert. ef. 7-22-94; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 4-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0006
Annual Renewal of Active License

(1) Active licensees must annually renew their license to practice optometry:

(a) Annual license-year renewal periods are established by the Board based upon birth dates of licensees;

(b) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked to the Board's mailing address on or before the due date.

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Payment for the correct license renewal fee(s);

(c) Documentation of completion of the required continuing optometric education; and

(d) Documentation of current CPR certification, as required in OAR 852-80-0040.

(4) The Board, as a courtesy, mails license year renewal notices to the licensee's current reported address of record. However, it is the licensee's responsibility to ensure timely renewal; failure to receive notice does not relieve the licensee of the responsibility to timely renew

(5) A licensee who is not more than 30 days late in renewing the license may renew upon payment to the Board of the required late fee. If a licensee is more than 30 days late, the license is automatically suspended upon 30-day notice sent to the licensee via certified mail, as required by ORS 683.120(2).

(6) If a licensee is more than 60 days late in renewing the license, the licensee may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement.

(7) Of the annual license renewal fee listed in OAR 852-010-0080, the Board is required by ORS 431.972 to collect an additional annual fee from each optometry licensee for the Electronic Prescription Drug Monitoring Fund, which is remitted to the Oregon Health Authority.

(8) In any seven-year period, any licensee whose complete license renewal and fee is not received or postmarked by the first day of the month of license expiration is subject to a late payment fee listed in OAR 852-010-0080, which must be received before the license will be issued.

(9) Any licensee whose Board-required CPR certification lapsed at any time during the licensing period is subject to a lapsed CPR fee as listed in OAR 852-010-0080, which must be received before the license will be issued.

Stat. Auth.: ORS 683, 182 & 431

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 431.972

Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 5-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0012
Inactive Status License

(1) Eligible licensees may be granted an inactive status license upon signed written request. If renewal is not due, the license will be converted from active to inactive at no charge. If renewal is due, the licensee will pay the inactive renewal fee.

(2) To remain in inactive status, a licensee must renew annually. Annual license-year renewal periods are established by the Board based upon birth dates of licensees.

(3) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked to the Board's mailing address on or before the due date.

(4) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee; and

(b) Payment for the correct license renewal fee(s).

(5) As a courtesy, the Board sends a license year renewal notice to the inactive status licensee's current reported address of record. However, it is the licensee's responsibility to ensure timely renewal; failure to receive notice does not relieve the licensee of the responsibility to timely renew.

(6) A licensee who is not more than 30 days late in renewing the license may renew the license upon payment to the Board of the required fee plus a late fee. If a licensee is more than 30 days late, the license is automatically suspended upon 30-day notice sent to the licensee by first-class mail.

(7) A licensee who is more than 60 days late in renewing the license may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement.

(8) An inactive status licensee whose license renewal fee is postmarked after the first day of the month of license expiration is subject to a late payment fee as listed in OAR 852-010-0080, which must be received before the license will be issued.

(9) Reactivation: To reactivate a license to practice optometry in Oregon, an inactive status licensee must complete the following requirements:

(a) Submit a signed Reactivation Request form;

(b) Pay the reactivation fee listed in OAR 852-010-0080 and the difference between the inactive and active status license renewal fees;

(c) Submit proof of continuing education hours equivalent to Oregon requirements for the previous licensing period;

(d) Submit documentation of current CPR certification, as required in OAR 852-80-0040;

(e) Submit proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI), unless this information has been previously provided to the Board;

(f) Provide the Board's office with the address of the intended primary practice location in the state of Oregon, if known, or the mailing address to be printed on the license;

(g) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(h) Pass any required criminal background check; and

(i) Pass the Oregon optometric law and administrative rules examination if the applicant last held an active status license in Oregon more than two years before the date the Board confirms receipt of the completed application.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 6-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0013
Uniformed Services

(1) No license renewal fees will be assessed while the licensee is on active duty with the Uniformed Services of the United States:

(a) As a courtesy, the Board will send annual renewal notices to the licensee's current reported address of record. To avoid being placed into lapsed license status, the licensee must return a completed and signed renewal form with proof of active duty status to the Board within stated timelines;

(b) Licensees under this rule who are moved into lapsed status by the Board may be reinstated at no cost by meeting the requirements of this rule; and

(c) Nothing in this rule may be construed to waive any other reinstatement or reactivation requirements for Oregon licensure.

(2) Written notification to the Board is required within 60 days of the date of discharge in order to change the license to its former status without fee or penalty. If notification is received by the Board more than 60 days from the date of discharge, but within the license renewal period in which the discharge becomes effective, the license may be changed to its former status by paying all fees and penalties appropriate for a license of that status.

(3) If a licensed optometric physician fails to notify the Board in writing of the change of status within 60 days from the date of discharge, or within the license renewal period in which the discharge becomes effective, whichever is the longer period of time, that person must take an examination and pay the examination fee as required by ORS 683.060.

Stat. Auth.: ORS 182, 408 & 683

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 408.450 & 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0014
Reinstatement of License

(1) A person who has been previously licensed by the Board may have the license reinstated to its former status if the person:

(a) Voluntarily surrendered the license to the Board and, at the time of surrender , was in good standing and not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board or

(b) The license was suspended due to nonpayment of the license renewal fee or late fee and, at the time of suspension, the licensee was not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board.

(2) To reinstate an Oregon Optometry license an optometric physician must:

(a) Submit a signed written request;

(b) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(c) Pass any required criminal background check;

(d) Pay delinquent fees as determined by the Board;

(e) Pay the reinstatement fee as listed in OAR 852-010-0080; and

(f) Submit documentation of current CPR certification, as required in OAR 852-80-0040;

(g) The requirements in (2)(b) and (2)(e) above may be waived by the Board if the license is not more than 60 days expired.

(3) Reinstatement of a license to active status also requires:

(a) Submission of a completed Reactivation Application form;

(b) Passage of the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon; and

(c) Submission of proof of continuing education equivalent to Oregon requirements for the previous license renewal period.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.120, 683.270 & 182.466
Hist.: OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15
1-15

852-050-0016
Notice of Place of Practice

(1) Each active licensee must notify the Board in writing of each place of practice before engaging in practice at that location. If the licensee is practicing in a mobile facility or with a portable unit, the licensee must report the Base of Operations and specific locations of such practice to the Board in compliance with this rule.

(a) Within 14 days of termination of practice at any location, licensee must notify the Board in writing, including information on the custody of any patient records generated by the licensee at that location.

(b) Written notification from a licensee to the Board must be signed, and may be made by mail, fax or scanned e-mail attachment. Standard e-mail notification from the licensee's professional or personal e-mail will be accepted with an electronic signature that is composed of the licensee's full legal name and optometry license number, followed by the last four digits of the licensee's Social Security number.

(2) Failure to notify the Board in writing of practice location(s) and any address change(s) in accordance with (1) above subjects the licensee to fees listed in OAR 852-010-0080.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0018
Official Address and Telephone Number of Record

(1) Each actively licensed optometric physician must notify the Board in writing of the licensee's primary practice location, which is recorded by the Board as the official address of record. All correspondence from the Board will be sent to the official address of record unless the licensee requests in writing that an alternate mailing address be used. Active licensees who do not have a primary practice location may provide the Board with a mailing address.

(2) Each inactive licensee must notify the Board in writing of a mailing address.

(3) Post office boxes are not acceptable as a mailing address unless a street address is included with it and it is able to receive certified mail and return receipts. (4) Each licensee (active or inactive) must provide a telephone number of record to the Board, which by default is disclosable to the public. Upon written request, the Board will hold the telephone number of record of a licensee confidential if it is a personal number not associated with a business.

(4) Each licensee (active or inactive) must provide a telephone number of record to the Board, which by default is disclosable to the public. Upon written request, the Board will hold the telephone number of record of a licensee confidential if it is a personal number not associated with a business.

(5) Failure to notify the Board in writing of a change in the licensee's official address or telephone phone number of record may subject the licensee to disciplinary action and a fee as listed in OAR 852-010-0080.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0021
Nonprofit Services

An actively licensed doctor of optometry in Oregon who volunteers to provide professional services to a charitable nonprofit corporation may request the additional practice location license required for that location from the Board at no charge.

(1) Nonprofit corporation means a charitable corporation as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Optometry as providing optometric services by volunteer licensed doctors of optometry to populations with limited access to eye care at no charge or at a substantially reduced charge.

(2) "Voluntary basis" means working of one's own free will and without payment for services.

(3) Any entity that owns or operates a nonprofit charitable clinic that provides eye care services must name an actively licensed Oregon optometric physician as its vision services director who is subject to the provisions of ORS 683 and OAR 852. This director is responsible for the patient records on eye care services for the clinic.

(4) Any licensed optometric physician who works at a nonprofit clinic described in (1) above must:

(a) Display a portable multiple practice location license, and

(b) Comply with all other provisions of ORS 683 and OAR 852, including reporting start and end dates of providing services at any practice location.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k) & 182.466
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-050-0025
State Criminal Records Check and Fitness Determination

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or to hold a license that has been issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require criminal history of applicants for an initial licensure or renewal, licensees applying to reinstate or reactivate a lapsed license, or licensees under investigation to determine the fitness of an applicant or licensee. This information must be provided upon request as prescribed by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check, and to other sources deemed necessary to ensure public protection

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit, the licensee's license may not be renewed, reactivated, or reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime; and

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction.

(F) Any other information the Board deems relevant or necessary.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary such as but not limited to: proof of identity, residential history, names used while living at each residence, or additional criminal, judicial or other background information.

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

(9) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and that is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(10) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon request from the applicant or licensee.

(11) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 683, 182, 181, 676

Stat. Implemented: ORS 683.140, 683.270, 182.466, 181.534 & 676.303

Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-060-0025

Disciplinary Action

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

(a) Deny an initial license;

(b) Suspend, refuse to renew or revoke a license;

(c) Impose probation on any licensee;

(d) Limit the practice of any licensee; and

(e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty, the assessment of a civil penalty not to exceed $10,000 for each violation, or both.

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

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

(b) Practicing optometry without a license;

(c) Securing a license by practicing fraud or deceit upon the Board;

(d) Unprofessional conduct;

(e) Gross ignorance or inefficiency in the practice of optometry;

(f) Failing to comply with the requirements of continuing education;

(g) Obtaining any fee by fraud or misrepresentation;

(h) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;

(i) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;

(j) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;

(k) Permitting another person to use the optometrist's license;

(l) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;

(m) Advertising professional methods or professional superiority;

(n) Violating the federal Controlled Substances Act;

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

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

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

(r) Any violation of the provisions of ORS 683.010 to 683.335; or

(s) Practicing optometry in a location not reported to the Board.

(t) Failing to report the suspected prohibited or unprofessional conduct of another health care licensee to the appropriate board within 10 working days as required in ORS 676.150 and 683.340.

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

Stat. Auth.: ORS 683, 182

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

Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-060-0027

Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:

(1) Any conduct or practice contrary to recognized standards of ethics of the optometric profession.

(2) Fraud, misrepresentation or dishonesty, including but not limited to:

(a) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading or deceitful statements are made.

(b) Misrepresenting any facts to a patient concerning treatments or fees.

(c) Making a false statement to the Board or to an agent of the Board.

(d) Willfully deceiving or attempting to deceive the Board, an employee of the Board, or an agent of the Board in any application or renewal, or in reference to any matter under investigation by the Board. This includes but is not limited to the omission, alteration or destruction of any records in order to obstruct or delay an investigation by the Board, or to omit, alter or falsify any information in patient or business records to avoid potential disciplinary action.

(3) Advertising professional methods or professional superiority, including using the term "board certified" without defining which board has provided the certification.

NOTE: As a licensing and regulatory agency, the Oregon Board of Optometry does not "board certify" optometric physicians.

(4) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor," or any contraction thereof, "clinic," "institute," "specialist," or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

(5) Aiding an unlicensed person in the practice of optometry.

(6) Permitting another person to use the optometrist's license

(7) Failure to train and directly supervise persons to whom optometric services have been appropriately delegated.

(8) Prescribing, dispensing or administering controlled substances outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(9) Habitual, excessive or unlawful use of intoxicants, drugs or controlled or mind-altering substances.

(10) Failing to keep complete and accurate records for a patient.

(11) Failing to retain patient records in an accessible print or electronic format.

(12) Failing to immediately give the prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination.

(13) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose information.

(14) Failing make appropriate transfer of the custody of patient records.

(15) Obstruction and harassment, including but not limited to:

(a) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.

(b) Conduct determined by the Board to be harassment of any complainant by the licensee or any member of the licensee's staff or practice, regardless of complaint case closure status.

(c) The use of threats, harassment, or any other conduct that obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.

(d) The discharge of an employee based primarily on the employee's attempt to comply with or aid in the compliance of the Board's rules, or with the Board's enforcement activities.

(16) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to waiver of confidentiality privileges except attorney-client privilege.

(17) Making an agreement with a patient or person, or any person or entity representing patients or persons, or providing any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Oregon Board of Optometry; to truthfully and fully answer any questions posed by an agent or representative of the Board; or to participate as a witness in a Board proceeding.

(18) Failing to respond in writing to a Board request for information as required.

(19) Failing to provide the Board with requested patient records.

(20) Failing to appear before the Board at a time and place designated by the Board for such appearance.

(21) Failing to comply with a Board order.

(22) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(23) Failing to give timely written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any licensing agency of any state.

(24) Failing to give written notification to the Board of any felony or misdemeanor convictions within 10 days of the conviction.

(25) Failure to timely report own or other licensee's suspected prohibited or unprofessional conduct, arrests or convictions as required by ORS 676.150, 683.335, and 683.340.

(26) Conduct that could be construed as moral turpitude.

(27) Conduct that could be construed as moral turpitude.

(28) Sexual misconduct, including but not limited to:

(a) Sexual abuse: Includes conduct that constitutes a violation of any provision of ORS 163.305 through 163.479, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil or administrative litigation, or admitted or stipulated by the professional;

(b) Sexual Violation: Includes professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital-to-genital contact; oral-to-genital contact; oral-to-anal contact; oral-to-oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present; and

(c) Sexual Impropriety: Includes any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation, making comments about potential sexual performance during an examination or consultation; requesting the details of sexual history unless medically necessary; questioning or discussing sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; or kissing of a sexual nature.

Stat. Auth.: ORS 683, 182 & 676

Stats. Implemented: ORS 683.140, 683.270, 676.150 & 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; Renumbered from 852-010-0027, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0010

Requirement of Continuing Optometric Education (CE)

The Oregon Board of Optometry is committed to ensuring the continuing education of its licensees for the protection, safety and wellbeing of the public. Continuing education is required to maintain and advance the professional skills and abilities of licensees and to educate optometric physicians in the application and use of new techniques, scientific and clinical advances and the achievements of research to ensure expansive and comprehensive care to the public.

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward approved excess CE hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease (TMOD).

(3) Optometric physicians must complete one hour of approved credit for an optometric ethics or Oregon law course every other license year, regardless of credits carried forward under (1) of this section. Licensees may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry.

(4) One hour of approved cultural competency continuing education may be used toward satisfying the required number of non-TMOD hours each license year.

(5) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(6) The required hours of continuing education used to meet the CE requirement each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted for credit in the same license renewal period, credit will be given for only one.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.140, 683.270, 683.210 & 182.466

Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1978, f. & ef. 1-25-78; OE 1-1984, f. & ef. 1-13-84; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0016

Continuing Optometric Education Not Required for Inactive Licenses

(1) Those licensees who have been granted inactive status by the Board are not required to complete the continuing optometric education requirement in OAR 852-070-0010.

(2) If an inactive licensee applies to change to active status, the licensee must comply with OAR 852-070-0010 for the continuing education license year previous to the year in which active status is granted by the Board.

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.210

Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0020
Application for Credit

Each continuing education offering must be approved by the Board in order for an optometric physician to obtain credit. Upon application the Board may:

(1) Grant credit, to the extent determined by it, for any course, or individual or group study deemed suitable to carry out the purposes of ORS 683.210. To be granted credit, any course offering must be open to all optometric physicians licensed in Oregon.

(2) Grant credit, to the extent determined by it, for publication of articles and papers of scientific and educational interest published in recognized scientific publications.

(3) Grant credit, to the extent determined by it, for courses that relate to the maintenance or advancement of professional skills and abilities. Courses that relate primarily to practice management or jurisprudence will not be granted credit.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210 & 683.270
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1979, f. & ef. 10-29-79; OE 2-1983, f. & ef. 2-22-83; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0025
Credit for Conducting Course or Presenting Material

Any optometric physician who prepares and presents a continuing education course approved for credit by the Board is entitled to three hours of continuing education credit for each credit hour of the initial presentation of the course. No credit will be given for repeat presentations unless application for credit has been filed in advance with the Board and appropriate evidence submitted that additional study or research was necessary for such additional presentation. The Board may then grant, to the extent deemed suitable by it, credit for the additional presentation.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0030
CE Requirements for Applicants and First-Time Renewals

(1) Applicants must meet the requirements for continuing education for initial licensure based on when they graduated from optometry school:

(a) Applicants who submit completed applications and are licensed less than one year after graduation from optometry school are not required to submit continuing education for initial licensure.

(b) Applicants receiving initial licensure one year or more after graduation from optometry school must submit required continuing education to receive initial licensure.

(2) All active status licensees must submit continuing education for their first license renewal that falls one year or more after graduation from optometry school.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1994, f. & cert. ef. 7-22-94; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0035
Responsibility to Notify Board

(1) Each active licensee must notify the Board of Optometry in writing of completion of the required hours of approved continuing education credits as part of the license renewal.

(2) Notification for at least the total number of required hours must be submitted at one time.

(3) If sufficient proof of continuing education is not received by the Board by the license year renewal period deadline, the license will not be renewed until the continuing education deficiency is made up in a manner acceptable to and approved by the Board.

(4) Licensees must submit original certificates of attendance or other proof of attendance acceptable to the Board.

(5) Any licensee who has completed the required continuing optometric education course work by the license year renewal period but fails to meet the submission deadline is subject to a late fee as listed in OAR 852-010-0080.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1984, f. & ef. 1-13-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-070-0055
Continuing Optometric Education Provided by Outside Entities

(1) All continuing optometric education provided by other organizations (non-COPE) must be submitted to the Board for approval before credit will be granted. Persons submitting courses for credit review must allow at least 30 days for the review. Renewing active status licensees may not count a course toward meeting the continuing education requirement before it is approved by the Board.

(2) Approval or denial of the continuing optometric education will be based on course:

(a) Relevance to modern optometric practice;

(b) Provision of skills or information which can translate to improved patient care;

(c) Content being recognized and accepted as sound scientific thought;

(d) Provision of heightened content standards needed by optometric physicians; and

(e) Presenter(s) credentials, as evidenced by a submitted curriculum vitae and an academic degree or combination of academic achievement and special expertise acceptable to the Board.

(3) The Board may accept continuing optometric education courses that have been approved by other organizations. This acceptance will be in accordance with the standards set by the Board.

(4) Courses acceptable to the Board for continuing education credit must be at least one half-hour in length, must be proctored for attendance, and the sponsor must provide original source documentation of successful completion to the attendee. Additional credits must be in half-hour increments.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

852-080-0040
Certification to Use Pharmaceutical Agents

(1) Inactive Status Topical TPA Certification (T): Any inactive status optometric physician licensed in Oregon who seeks TPA certification must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed a 100-hour TPA course approved by the Board;

(b) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for topical TPA certification; and

(c) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents."

(2) Active Status Nontopical TPA Certification (AT): Before using nontopical therapeutic pharmaceutical agents as listed in this rule, any active status optometric physician in Oregon seeking AT certification must submit a completed application and:

(a) Meet Topical TPA Certification;

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification:

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(B) Documentation of CPR certification is due with the licensee's annual license renewal as required in OAR 852-050-0006; and

(C) Any licensee whose CPR certification lapses at any time in the licensing year is subject to a late CPR fee as listed in OAR 852-010-0080.

(3) Inactive Status Nontopical TPA Certification (AT): Any inactive status optometric physician licensed in Oregon who seeks AT certification must submit a completed application and:

(a) Meet all criteria for Topical TPA Certification in OAR 852-080-0040(1);

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(c) Pay a the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire Board-approved CPR certification designed for professional healthcare providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(4) Active Status Nontopical TPA Certification with Injections (ATI): Before using nontopical therapeutic pharmaceutical agents as listed in this rule, any active status optometric physician in Oregon seeking ATI certification must submit an application and:

(a) Pass a Board-approved Nontopical TPA course of at least 23 hours or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification;

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(B) Documentation of CPR certification is due with the licensee's annual license renewal as indicated in OAR 852-050-0006;

(C) Any licensee whose CPR certification lapses at any time in the licensing year is subject to a late CPR fee as listed in OAR 852-010-0080.

(5) Inactive Status Nontopical TPA Certification with Injections (ATI): Any inactive status optometric physician licensed in Oregon who seeks ATI certification must submit an application and:

(a) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire Board-Approved CPR certification designed for professional healthcare providers. The CPR certification must be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial certification must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires. Inactive status licensees are not required to maintain CPR certification after initial TPA certification.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 3-2003, f. 9-15-03, cert. ef. 10-1-03; OPT 3-2004, f. 9-24-04, cert. ef. 10-1-04; OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 4-2006, f. & cert. ef. 8-2-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15

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Board of Pharmacy
Chapter 855

Rule Caption: Permanently amend, adopt or repeal rules in Divisions 001, 019, 025 or 080.

Adm. Order No.: BP 10-2014

Filed with Sec. of State: 12-30-2014

Certified to be Effective: 1-1-15

Notice Publication Date: 11-1-2014

Rules Adopted: 855-019-0122, 855-019-0171, 855-025-0012

Rules Amended: 855-001-0005, 855-019-0100, 855-019-0120, 855-019-0170, 855-019-0205, 855-025-0001, 855-025-0005, 855-025-0010, 855-025-0015, 855-025-0020, 855-025-0025, 855-025-0030, 855-025-0035, 855-025-0040, 855-025-0050, 855-025-0060, 855-080-0022

Rules Repealed: 855-019-0320

Subject: Division 1 Model Rules of Procedure rules are permanently amended to reflect the most current version of the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act.

Division 19 Licensing of Pharmacists rules are permanently amended to make the Pharmacist license valid for two years and renewable on a biennial basis. The Pharmacist license will expire on June 30 in odd numbered years. Permanent rule amendments also reflect that the Pharmacists will be subject to a criminal background check annually. This is not a new requirement. The requirement is reflected in the division 10 Board Administration and Policies rules. It was added to division 19 for clarity. Other permanently amended rules include requiring Pharmacists to provide a valid e-mail address and notify the Board in writing if they have had a change in their e-mail address. Rules for the petition for reinstatement of Pharmacist licenses are repealed. A new section of rules are permanently adopted for the reinstatement of a revoked or surrendered license. These rules allow a Pharmacist to petition the Board for reinstatement in writing and provide a more streamlined process.

Division 25 Certified Oregon Pharmacy Technicians and Pharmacy Technicians rules are permanently amended to require a Certified Oregon Pharmacy Technician or Pharmacy Technician to be at least 18 years of age and hold either a high school diploma or GED. The age requirement does not apply to persons currently under the age of 18 licensed by the Board as a Pharmacy Technician prior to January 1, 2015. Permanent rule amendments also make the Pharmacy Technician license valid for only one year except by petition to the Board or it may be reinstated if lapsed for more than five years. Certified Oregon Pharmacy Technicians are required to hold a national certification for initial licensure. However, effective January 1, 2015 it is no longer a requirement for renewal. Other permanent rule amendments require Certified Oregon Pharmacy Technicians to complete 10 continuing pharmacy education hours from September 1 through August 31 of each renewal cycle. Reinstatement rules have been permanently amended to provide applicants

with a process more aligned with Pharmacist reinstatement requirements.

Division 80 Controlled Substance rules are permanently amended to add delta-9-tetrahydrocannabinol (THC) to Schedule II substances for clarification.

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

855-001-0005
Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Board of Pharmacy adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act effective July 1, 2014. These rules shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Pharmacy.]
Stat. Auth.: ORS 183.341 & 689.205
Stats. Implemented: ORS 183.341
Hist.: 1PB 25, f. 3-20-72, ef. 4-15-72; 1PB 31, f. 11-20-73, ef. 12-11-73; 1PB 42, f. & ef. 4-6-76; Renumbered from 855-010-0030; 1PB 7-1978(Temp), f. & ef. 7-1-78; 1PB 9-1978, f. & ef. 10-23-78; 1PB 1-1980, f. & ef. 1-21-80; 1PB 3-1981, f. & ef. 12-15-81; PB 2-1987, f. & ef. 3-30-87; PB 5-1988, f. & cert. ef. 10-17-88; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 5-2004, f. & cert. ef. 10-1-04; BP 13-2006, f. & cert. ef. 12-19-06; BP 3-2008, f. & cert. ef. 7-1-08; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0100
Application

(1) This Division applies to any pharmacist who is licensed to practice pharmacy in Oregon including any pharmacist located in another state who is consulting, or providing any other pharmacist service, for a patient, pharmacy or healthcare facility in Oregon.

(2) Where so indicated, these rules also apply to an intern who is licensed in Oregon.

(3) Any pharmacist who engages in the practice of pharmacy in Oregon must be licensed by the Board in accordance with the following rules.

(4) A pharmacist who is located in another state and who engages in the practice of pharmacy for a patient, drug outlet or healthcare facility in Oregon, must be licensed by the Board in accordance with the following rules, except that a pharmacist working in an out-of-state pharmacy, who only performs the professional tasks of interpretation, evaluation, DUR, counseling and verification associated with their dispensing of a drug to a patient in Oregon, is not required to be licensed by the Board unless they are the pharmacist-in-charge (PIC).

(5) The Board may waive any requirement of this rule if, in the Board's judgment, a waiver will further public health or safety. A waiver granted under this section shall only be effective when issued in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.255
Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0120
Licensure

(1) Before licensure as a pharmacist, an applicant must meet the following requirements:

(a) Provide evidence from a school or college of pharmacy approved by the Board that they have successfully completed all the requirements for graduation and, starting with the graduating class of 2011, including not less than 1440 hours of School-based Rotational Internships as that term is defined in OAR 855-031-0005, and that a degree will be conferred;

(b) Pass the North American Pharmacist Licensure Examination (NAPLEX) exam with a score of not less than 75. This score shall remain valid for only one year unless the Board grants an extension. A candidate who does not attain this score may retake the exam after a minimum of 91 days except that a candidate who has failed the exam three times must wait at least one year before retaking the exam;

(c) Pass the Multistate Pharmacy Jurisprudence Examination (MPJE) exam with a score of not less than 75. The applicant may not take the MJPE until they have graduated from a school or college of pharmacy approved by the Board. A candidate who does not attain this score may retake the exam after a minimum of 30 days except that a candidate who has failed the exam three times must wait at least one year before retaking the exam. The MJPE score shall be valid for 6 months unless extended by the Board;

(d) Complete an application for licensure, provide the Board with a valid e-mail address, and a fingerprint card or other documentation required to conduct a criminal background check.

(2) A license, once obtained, will expire on June 30 in odd numbered years and must be renewed biennially.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0005, BP 2-2008, f. & cert. ef. 2-20-08; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 4-2011, f. 6-24-11, cert. ef. 7-1-11; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0122
Renewal of Licensure as a Pharmacist

(1) An application for renewal of a pharmacist license must include documentation of:

(a) Completion of continuing education requirements as prescribed in chapter 855, division 21; and

(b) Payment of the biennial license fee as prescribed in OAR 855-110.

(2) A pharmacist will be subject to an annual criminal background check.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151
Hist.: BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0170
Reinstatement of License

(1) A pharmacist who fails to renew their license by the deadline may reinstate their license as follows:

(a) By payment of the license fees and delinquency fees for all years during which the license was lapsed and for the current year; and

(b) By providing certification of completion of the continuing education requirement for all years in which the license was lapsed; and

(c) If their license has been lapsed for more than one year, pass the MPJE with a score of not less than 75; and

(d) Complete an application for licensure, provide the board with a valid e-mail address, and a fingerprint card or other documentation required to conduct a criminal background check.

(2) A pharmacist in good standing who retired from the practice of pharmacy after having been licensed for not less than 20 years need only pay the annual license fees for the year in which they seek a license, however they must provide certification of completion of continuing education for all years since their retirement and pass the MPJE with a score of not less than 75.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151 & 689.275
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1981, f. & ef. 8-20-81; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0040, BP 2-2008, f. & cert. ef. 2-20-08; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0171
Reinstatement of a Revoked or Surrendered License

A person whose pharmacist license has been revoked or surrendered shall have the right, at reasonable intervals, to petition to the Board in writing for reinstatement of such license. The written petition to the Board shall be made in conjunction with the application process identified in OAR 855-019-0120.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151 & 689.275
Hist.: BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-019-0205
Duty to Report

(1) Failure to answer completely, accurately and honestly, all questions on the application form for licensure or renewal of licensure is grounds for discipline.

(2) Failure to disclose any arrest for a felony or misdemeanor, or any indictment for a felony may result in denial of the application.

(3) A pharmacist must report to the Board within 10 days if they:

(a) Are convicted of a misdemeanor or a felony; or

(b) If they are arrested for a felony.

(4) A pharmacist who has reasonable cause to believe that another licensee (of the Board or any other Health Professional Regulatory Board) has engaged in prohibited or unprofessional conduct as these terms are defined in OAR 855-006-0005, must report that conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting pharmacist shall report the conduct without undue delay, but in no event later than 10 working days after the pharmacist learns of the conduct unless federal laws relating to confidentiality or the protection of health information prohibit disclosure.

(5) A pharmacist who reports to a board in good faith as required by section (4) of this rule is immune from civil liability for making the report.

(6) A pharmacist who has reasonable grounds to believe that any violation of these rules has occurred, must notify the Board within 10 days. However, in the event of a significant drug loss or violation related to drug theft, the pharmacist shall notify the Board within one (1) business day.

(7) A pharmacist must notify the Board in writing, within 15 days, of any change in e-mail address, employment location or residence address.

Stat. Auth.: ORS 689.205
Stats. Implemented: 689.151, 689.155 & 689.455
Hist.: BP 6-2010, f. & cert. ef. 6-29-10; BP 2-2014, f. & cert. ef. 1-24-14; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0001
Transition from Registration of Technician to Licensure of Technician

The purpose of the Pharmacy Technician license is to provide an opportunity for a person to obtain competency in the role of Pharmacy Technician. It will allow a person to have time to take and pass a national pharmacy technician certification examination required to be eligible for licensure as a Certified Oregon Pharmacy Technician; and facilitate the initial license of a nationally certified Pharmacy Technician seeking licensure in Oregon.

Stat. Auth.: 689.205
Stats. Implemented: 689.225
Hist.: BP 8-2005, f. 12-14-05, cert. ef. 12-15-05; BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0005
Qualifications for Licensure as a Pharmacy Technician or Certified Oregon Pharmacy Technician

(1) To qualify for licensure as a Pharmacy Technician or Certified Oregon Pharmacy Technician, an applicant must demonstrate that the applicant is at least 18 years of age and holds a high school diploma or GED.

(2) Section one does not apply to persons under the age of 18 licensed by the Board as a Pharmacy Technician prior to January 1, 2015.

(3) An applicant for licensure as a Pharmacy Technician or Certified Oregon Pharmacy Technician must complete an application for licensure, provide the Board with a valid e-mail address and furnish documentation required to conduct a criminal background check.

(4) No person whose license has been denied, revoked, suspended or restricted by any healthcare professional regulatory Board may be licensed as a Pharmacy Technician or Certified Oregon Pharmacy Technician unless the Board determines that licensure will pose no danger to patients or to the public interest.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0010
Licensure as a Pharmacy Technician

(1) The license of a Pharmacy Technician expires one year from the date upon which it is issued.

(2) The Pharmacy Technician license is not renewable except by petition to the Board.

(3) An individual may reapply for a Pharmacy Technician license if his or her previous license is lapsed for a period greater than five years or by petition to the Board.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0012
Licensure as a Certified Oregon Pharmacy Technician

(1) To obtain a Certified Oregon Pharmacy Technician license, the applicant must demonstrate that the applicant has taken and passed a national pharmacy technician certification examination offered by:

(a) The Pharmacy Technician Certification Board (PTCB); or

(b) The National Healthcareer Association (NHA).

(2) The license of a Certified Oregon Pharmacy Technician expires September 30 annually.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0015
Renewal of Licensure as a Certified Pharmacy Technician

(1) A person who has taken and passed a national pharmacy technician certification examination listed in OAR 855-025-0012(1)(a)–(b) may use the following title, are referred to in these rules as, and are licensed as a "Certified Oregon Pharmacy Technician."

(2) An applicant for renewal of a Certified Oregon Pharmacy Technician license must:

(a) Pay the license fee prescribed in OAR 855-110.

(b) Satisfactorily complete a minimum of 10 continuing pharmacy educating hours during the period from September 1 through August 31, of each license renewal cycle. These hours must include:

(A) One hour of continuing pharmacy education in pharmacy law;

(B) One hour of continuing pharmacy education in patient safety or error prevention; and

(C) Eight other hours of continuing pharmacy education hours or documented onsite training, approved by the Board.

(c) Be subject to an annual criminal background check.

(3) The Board may randomly select and audit applications for renewal to verify completion of the continuing education or documented onsite training reported on the application for renewal. Certified Oregon Pharmacy Technicians whose applications for renewal are selected for audit must provide documentation of completion of the continuing pharmacy education reported.

(4) Effective January 1, 2015, national certification is not required to renew a license as a Certified Oregon Pharmacy Technician.

(5) A Certified Oregon Pharmacy Technician who fails to renew his or her license by the expiration date and whose license has been lapsed less than 180 days may renew his or her license as follows:

(a) Pay the license fee as prescribed in OAR 855-110.

(b) Pay a delinquent fee.

(6) A Certified Oregon Pharmacy Technician who fails to renew their license by the deadline and whose license has been lapsed 180 days may reinstate his or her license under OAR 855-025-0060(1).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0020
Recordkeeping Responsibilities of Pharmacy Technicians and Certified Oregon Pharmacy Technicians

(1) Failure to answer completely, accurately and honestly, all questions on the application form for licensure or renewal of licensure is grounds for discipline.

(2) Failure to disclose any arrest for a felony or misdemeanor, or any indictment for a felony may result in denial of the application.

(3) A Pharmacy Technician or Certified Oregon Pharmacy Technician must report to the Board within 10 days if they:

(a) Are convicted of a misdemeanor or a felony; or

(b) If they are arrested for a felony.

(4) A Pharmacy Technician or Certified Oregon Pharmacy Technician who has reasonable cause to believe that another licensee (of the Board or any other Health Professional Regulatory Board) has engaged in prohibited or unprofessional conduct as these terms are defined in OAR 855-006-0005, must report that conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting Pharmacy Technician or Certified Oregon Pharmacy Technician shall report the conduct without undue delay, but in no event later than 10 working days after the reporting Pharmacy Technician or Certified Oregon Pharmacy Technician learns of the conduct unless federal laws relating to confidentiality or the protection of health information prohibit disclosure.

(5) A Pharmacy Technician or Certified Oregon Pharmacy Technician who reports to a Board in good faith as required by section (4) of this rule is immune from civil liability for making the report.

(6) A Pharmacy Technician or Certified Oregon Pharmacy Technician who has reasonable grounds to believe that prescription drugs or records have been lost or stolen, or any violation of these rules has occurred, must notify the Board within 1 day.

(7) A Pharmacy Technician or Certified Oregon Pharmacy Technician must notify the Board in writing, within 15 days, of any change in email address, employment location or residence address except that a Pharmacy Technician who is employed at more than one pharmacy need only report the name and address of the pharmacy at which the technician normally works the most hours.

(8) A Certified Oregon Pharmacy Technician must obtain certificates of completion that show the date and number of hours earned to document continuing pharmacy education credit earned and must keep the certificates of completion for three years from the date of the program.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 689.455
Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, Ch. 536 OL 2009
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 6-2010, f. & cert. ef. 6-29-10; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0025
Use of Pharmacy Technicians and Certified Oregon Pharmacy Technicians

(1) A Pharmacist or pharmacy may use Pharmacy Technicians or Certified Oregon Pharmacy Technicians only as authorized by the rules of the Board.

(2) Pharmacy Technicians or Certified Oregon Pharmacy Technicians must be supervised by a Pharmacist.

(3) Pharmacists, Pharmacist Interns, Pharmacy Technicians and Certified Oregon Pharmacy Technicians must be clearly identified as such to the public.

(4) Work performed by Pharmacy Technicians and Certified Oregon Pharmacy Technicians assisting the Pharmacist to prepare medications must be verified by a Pharmacist prior to release for patient use. Verification must be documented, available and consistent with the standard of practice.

(5) The pharmacist-in-charge must prepare and maintain in the pharmacy written procedures that describe the tasks performed by Pharmacy Technicians or Certified Oregon Pharmacy Technicians, and the methods of verification and documentation of work performed by Pharmacy Technicians or Certified Oregon Pharmacy Technicians. Written procedures must be available for inspection by the Board or its representatives. The pharmacist-in-charge must review written procedures annually and document that review on the annual pharmacist-in-charge inspection sheet.

(6) Training:

(a) The pharmacist-in charge must outline, and each Pharmacy Technician or Certified Oregon Pharmacy Technician must complete initial training that includes on-the-job and related education that is commensurate with the tasks that the Pharmacy Technician or Certified Oregon Pharmacy Technician will perform, prior to the performance of those tasks.

(b) The pharmacist-in-charge must ensure the continuing competency of Pharmacy Technicians or Certified Oregon Pharmacy Technicians.

(c) The pharmacist-in-charge must document initial training of each Pharmacy Technician or Certified Oregon Pharmacy Technician and make that documentation available to the Board or its representatives upon request.

(7) Upon written request, the Board may waive any of the requirements of this rule upon a showing that a waiver will further public health or safety or the health or safety of a patient or other person. A waiver granted under this section is effective only when issued by the Board in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0030
Confidentiality

(1) No licensee of the Board who obtains any patient information shall disclose that information to a third-party without the consent of the patient except as provided in section two of this rule.

(2) A licensee may disclose patient information:

(a) To the Board;

(b) To a practitioner, Pharmacist, Pharmacy Technician, or Certified Oregon Pharmacy Technician, if disclosure is authorized by a Pharmacist who reasonably believes that disclosure is necessary to protect the patient's health or well-being; or

(c) To a third-party when disclosure is authorized or required by law; or

(d) As permitted pursuant to federal and state patient confidentiality laws.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0035
Pharmacy and Pharmacist Responsibility for Supervising Pharmacy Technicians and Certified Oregon Pharmacy Technicians

(1) The supervising Pharmacist and the pharmacist-in-charge are responsible for the actions of Pharmacy Technicians or Certified Oregon Pharmacy Technicians. The use of Pharmacy Technicians or Certified Oregon Pharmacy Technicians to perform tasks not included in written procedures maintained by the pharmacy constitutes unprofessional conduct on the part of the supervising Pharmacist and the pharmacist-in-charge.

(2) The pharmacy must maintain on file and post the current license of each Pharmacy Technician or Certified Oregon Pharmacy Technician.

(3) Before allowing any person to work as a Pharmacy Technician or Certified Oregon Pharmacy Technician, the pharmacy and Pharmacist shall verify that the person is currently licensed as a Pharmacy Technician or Certified Oregon Pharmacy Technician.

(4) Prior to performing the duties of a Pharmacy Technician or Certified Oregon Pharmacy Technician, a person must provide to the Pharmacist or pharmacist-in-charge a copy of the person's current Pharmacy Technician license or current Certified Oregon Pharmacy Technician license.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0040
Certified Oregon Pharmacy Technician and Pharmacy Technician Tasks and Guidelines

(1) Non-licensed pharmacy personnel may enter non-prescription information into a computer record system and may perform clerical duties such as filing prescriptions, delivery, housekeeping, and general record keeping, but the responsibility for the accuracy of the non-licensed pharmacy personnel's work lies with the Pharmacist.

(2) Only persons licensed with the Board as a Pharmacy Technician or Certified Oregon Pharmacy Technician, acting in compliance with all applicable statutes and rules and under the supervision of a Pharmacist, may assist in the practice of pharmacy by the following:

(a) Packing, pouring or placing in a container for dispensing, sale, distribution, transfer possession of, any drug, medicine, poison, or chemical which, under the laws of the United States or the State of Oregon, may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Reconstituting prescription medications. The supervising Pharmacist must verify the accuracy in all instances.

(c) Affixing required labels upon any container of drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals.

(d) Entering information into the pharmacy computer. The Pharmacy Technician or Certified Oregon Pharmacy Technician shall not make any decisions that require the exercise of judgment and that could affect patient care. The supervising Pharmacist must verify prescription information entered into the computer and is responsible for all aspects of the data and data entry.

(e) Initiating or accepting oral or electronic refill authorization from a practitioner or practitioner's agent, provided that nothing about the prescription is changed, and record the medical practitioner's name and medical practitioner's agent's name, if any;

(f) Prepackaging and labeling of multi-dose and unit-dose packages of medication. The Pharmacist must establish the procedures, including selection of containers, labels and lot numbers, and must verify the accuracy of the finished task.

(g) Picking doses for unit dose cart fill for a hospital or for a nursing home patient. The Pharmacist must verify the accuracy of the finished task.

(h) Checking nursing units in a hospital or nursing home for non-judgmental tasks such as sanitation and out of date medication. Any problems or concerns shall be documented and initialed by a Pharmacist.

(i) Recording patient or medication information in computer systems for later verification by the Pharmacist.

(j) Bulk Compounding. Solutions for small-volume injectables, sterile irrigating solutions, products prepared in relatively large volume for internal or external use by patients, and reagents or other products for the pharmacy or other departments of a hospital. The supervising Pharmacist must verify the accuracy in all instances.

(k) Preparation of parenteral products as follows:

(A) Performing functions involving reconstitution of single or multiple dosage units that are to be administered to a given patient as a unit. The supervising Pharmacist must verify the accuracy in all instances.

(B) Performing functions involving the addition of one manufacturer's single dose or multiple unit doses of the same product to another manufacturer's prepared unit to be administered to a patient. The supervising Pharmacist must verify the accuracy in all instances.

(l) Performing related activities approved in writing by the Board.

(3) In order to protect the public, safety, health and welfare, Pharmacy Technicians or Certified Oregon Pharmacy Technicians shall not:

(a) Communicate or accept by oral communication a new or transferred prescription of any nature;

(b) Receive or transfer a prescription to another pharmacy without the prior verification of a Pharmacist.

(c) Provide a prescription or medication to a patient without a Pharmacist's verification of the accuracy of the dispensed medication;

(d) Counsel a patient on medications or perform a drug utilization review;

(e) Perform any task that requires the professional judgment of a Pharmacist; or

(f) Engage in the practice of pharmacy as defined in ORS 689.015.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0050
Grounds for Discipline of Pharmacy Technicians and Certified Oregon Pharmacy Technicians

The State Board of Pharmacy may refuse to issue or renew; or may suspend, revoke, or restrict the license of a Pharmacy Technician or Certified Oregon Pharmacy Technician; or may impose a civil penalty upon a Pharmacy Technician or Certified Oregon Pharmacy Technician upon the following grounds including but not limited to:

(1) Unprofessional conduct as defined in OAR 855-006-0005;

(2) Repeated or gross negligence in performing the duties of a Pharmacy Technician or Certified Oregon Pharmacy Technician;

(3) Impairment, which means an inability to assist in the practice of pharmacy with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition;

(4) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(5) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;

(6) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(7) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a Pharmacy Technician or Certified Oregon Pharmacy Technician license;

(8) Allowing an individual to engage in the duties of a Pharmacist, Pharmacy Technician or Certified Oregon Pharmacy Technician without a license or to use falsely the title of Pharmacist, Pharmacy Technician or Certified Oregon Pharmacy Technician;

(9) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto;

(10) Failure to appropriately perform the duties of a Pharmacy Technician or Certified Oregon Pharmacy Technician as outlined in OAR 855-025-0040 while assisting a Pharmacist in the practice of pharmacy as defined in ORS 689.005;

(11) Any act or practice relating to performing the duties of a Pharmacy Technician or Certified Oregon Pharmacy Technician which is prohibited by state or federal law or regulation; or

(12) Any conduct or practice by a Pharmacy Technician, Certified Oregon Pharmacy Technician or pharmacy that the Board determines is contrary to the accepted standards of practice.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151 & 689.405
Hist.: BP 9-2005, f. 12-14-05, cert. ef. 12-15-05; BP 1-2006, f. & cert. ef. 6-9-06; BP 6-2010, f. & cert. ef. 6-29-10; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-025-0060
Reinstatement of a Certified Oregon Pharmacy Technician License

(1) A Certified Oregon Pharmacy Technician who fails to renew their license by the deadline and whose license has been lapsed 180 days or longer may reinstate their license as follows:

(a) Complete a new application for licensure and provide the Board with a valid e-mail address; and

(b) Pay the license fee as prescribed in OAR 855-110.

(2) A Certified Oregon Pharmacy Technician whose license has been lapsed greater than four years must:

(a) Complete an application for licensure, provide the Board with a valid e-mail address, and a fingerprint card or other documentation required to conduct a criminal background check;

(b) Pay the license fee as prescribed in OAR 855-110; and

(c) Re-take and pass a national pharmacy technician certification examination offered by:

(A) The Pharmacy Technician Certification Board (PTCB); or

(B) National Healthcareer Association (NHA).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

855-080-0022
Schedule II

Schedule II consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.12 and any quantity of the following substances:

(1) Marijuana and delta-9-tetrahydrocannabinol (THC).

(2) Methamphetamine, when in the form of an FDA approved product containing methamphetamine, its salts, isomers and salts of its isomers as an active ingredient for the purposes of currently accepted medical use.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 475.035, 475.059 & 475.065
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15

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Rule Caption: Permanently amend Division 021 Pharmacist Continuing Education rules.
Adm. Order No.: BP 11-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 7-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 855-021-0005, 855-021-0010, 855-021-0016, 855-021-0025, 855-021-0045, 855-021-0050, 855-021-0055
Subject: Division 21 Pharmacist Continuing Education rules are permanently amended to require Pharmacists to complete three continuing pharmacy education units (30 hours) from July 1 through June 30 of each biennial license renewal cycle in an approved continuing pharmacy education program. These permanent amendments coincide with the transition to Pharmacist biennial licensure.
Rules Coordinator: Karen MacLean—(971) 673-0001

855-021-0005
Continuing Pharmacy Education Required for Pharmacist License Renewal

(1) During the period from July 1 through June 30 of each biennial license renewal cycle, each pharmacist must have satisfactorily completed three (3) continuing pharmacy education units (CEU's) in an approved continuing pharmacy education program prior to submission of the license renewal. Ten contact hours equals 1 CEU. Fifty minutes equals 1 contact hour.

(2) Section (1) does not apply to pharmacists applying for the first renewal of their license if they have not been licensed by the Board for at least one year prior to July 1 of the renewal period.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.285
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0010
Continuing Pharmacy Education

(1) In this rule the terms below have the meanings given:

(a) "Patient Safety" means procedures and processes that ensure that the correct patient receives the correct drug in the correct dose, and is counseled appropriately.

(b) "Medication error prevention" means procedures and processes to prevent and avoid adverse events and to ensure that the correct patient receives the correct drug in the correct dose.

(2) A continuing pharmacy education program means classes of post graduate studies, informal study group participation, institutes, seminars, lectures, conferences, workshops, extension study, correspondence courses, teaching, planned and professional meetings, self study courses, cassette or audio visual tape/slides or materials, and other self instruction units:

(a) A program shall consist of therapeutics, or pharmacy and drug law or other aspects of health care. A minimum of at least two hours of continuing education credit must be earned in the area of pharmacy and drug law.

A minimum of two hours of continuing education credit must be earned in the area of patient safety or medication error prevention.

(b) Programs shall provide for examinations or other methods of evaluation to assure satisfactory completion by participants.

(c) The person or persons who are to instruct or who are responsible for the delivery or content of the program shall be qualified in the subject matter by education and experience.

(3) Continuing pharmacy education programs shall be approved by the Board of Pharmacy. Application for approval shall be made on and in accordance with forms established by the Board. The forms shall require information relating to:

(a) Name of provider or sponsor;

(b) Type of program offered;

(c) Description of subject matter;

(d) Number of contact hours offered;

(e) Total number of contact hours in therapeutics or pharmacy and drug law or other aspects of health care;

(f) Method of determining satisfactory completion of program;

(g) Dates and location of program;

(h) Name and qualification of instructors or other persons responsible for the delivery or content of the program.

(4) CE programs are not required to carry approval of American Council on Pharmaceutical Education (ACPE). Programs presented by providers approved by the American Council on Pharmacy Education (ACPE) are generally accepted, however, the Board reserves the right to determine the number of hours allowed or to disapprove such programs.

(5) Providers shall provide attendees with proof of attendance that shows the date and number of contact hours provided. Providers must maintain attendance lists for three years.

(6) Continuing pharmacy education credit accumulated in excess of the required 30 contact hours for biennial license renewal cannot be carried forward.

(7) A maximum of 20 contact hours (2.0 CEU) may be earned in any licensing cycle by preparing and presenting CE programs. Pharmacists presenting CE programs may earn one contact hour (0.1 CEU) for preparation time of one hour or more, plus credit for the actual contact hour time of the presentation. A pharmacist must show content of the course, and a description of the intended audience (e.g., pharmacists, physicians, nurses). Public service programs, such as presentations to school children or service clubs, are not eligible for continuing education credit.

(8) Pharmacists taking post graduate studies applicable to graduate or professional degrees may submit the course syllabus and evidence of satisfactory completion of the course for continuing education credit approval by the Board.

(9) The Board may approve up to 26 contact hours of CE credit for pharmacists who have successfully completed nationally certified Disease State Management courses.

(10) Board members or staff may attend CE programs for the purpose of evaluating content, format and appropriateness of material for Continuing Pharmacy Education credit. Subsequent programs by CE providers whose current programs are deemed deficient by on-site evaluation may be required to obtain prior approval by the Board. The Board will provide feedback to CE providers regarding evaluated CE presentations.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.285
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1984, f. & ef. 3-7-84; 1PB 1-1986, f. & ef. 6-5-86; PB 10-1987, f. & ef. 12-8-87; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; BP 5-2000(Temp), f. 6-20-00, cert. ef. 6-20-00 thru 10-27-00; Administrative correction 6-21-01; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04; BP 12-2010, f. & cert. ef. 12-23-10; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0016
Continuing Education in Pain Management

(1) A pharmacist licensed under these rules must complete seven hours of continuing education in pain management as detailed in the following sub-sections. This is a one-time requirement:

(a) A one-hour pain management course, specific to Oregon, provided by the Pain Management Commission of the Oregon Health Authority; and

(b) A minimum of six hours of continuing education in pain management. This requirement may be fulfilled by any combination of continuing education coursework focusing on pain management including but not limited to the treatment of terminally ill and dying patients, and those with chronic, non-malignant pain.

(2) A pharmacist must complete the required continuing education within 24 months of their first license renewal.

(3) A pharmacist must retain for three years, documentation showing they have met the requirement of this rule, and must provide this documentation if requested by the Board.

(4) The pain management continuing education required under this rule shall count towards the 3.0 continuing pharmacy education units required under OAR 855-021-0005, in the license cycle in which the pain management continuing education is completed.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.285, 409.560 & 409.565
Hist.: BP 7-2006(Temp) f. & cert. ef. 8-25-06 thru 1-20-07; BP 11-2006, f. & cert. ef. 12-19-06; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0025
Continuing Pharmacy Education — Reciprocity

A pharmacist reciprocating into Oregon will not be required to submit proof of continuing pharmacy education during the initial license cycle.

Stat. Auth.: ORS 689.285
Stats. Implemented: ORS 689.205
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0045
Notification of Annual License Renewal

(1) The Board will develop an appropriate biennial renewal notice to be issued to all licensed pharmacists prior to May 1 of each odd numbered year.

(2) The notice will state the biennial pharmacist license fee and the continuing pharmacy education fee due for license renewal.

(3) The notice will include the continuing pharmacy education time requirement and any other information considered pertinent for the licensee's understanding of the renewal requirements.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.275
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0050
Renewal Application

(1) The biennial renewal application must be submitted to the Board with the appropriate fee and the pharmacist must attest that he/she has satisfactorily completed the continuing pharmacy education requirements.

(2) The Board may randomly select and audit applications for renewal to verify completion of the CE programs reported on the application for renewal. Pharmacists whose applications for renewal are selected for audit must provide documentation of completion of the CE programs reported. A pharmacist who fails to provide the requested documentation to the Board or who fails to complete the biennial CE requirement may be disciplined for unprofessional conduct.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.275
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

855-021-0055
Reinstatement

(1) Any person petitioning for reinstatement of a pharmacist license as provided within ORS 689.445 shall produce certification of the continuing education requirements of all years in which the license has been inactive prior to restoration of the license.

(2) Retired pharmacists who wish to reinstate their license should refer to OAR 855-019-0170(2).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.445
Hist.: 1PB 45, f. & ef. 7-6-76; 1PB 2-1979, f. & ef. 10-3-79, 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1981, f. & ef. 8-20-81; BP 11-2014, f. 12-30-14, cert. ef. 7-1-15

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Rule Caption: Permanently amend Division 041 Prescription Refill rules.
Adm. Order No.: BP 12-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2014
Rules Amended: 855-041-1120
Subject: Division 41 Prescription Refill rules are permanently amended to establish requirements for the use of auto-refill programs, reminders, and pick-up notifications for retail pharmacies. These rules are effective January 1, 2016 in order to provide retail pharmacies time to modify their automated systems and notify

patients as appropriate. The Board will notify effected licensees and provide guidance.

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

855-041-1120
Prescription Refills

(1) Where refill authority is given other than by the original prescription, documentation that such refill authorization was given, the date of authorization, and name of the authorizing prescriber or the prescriber's agent must be recorded. This documentation must be readily retrievable. Prescriptions for controlled substances in Schedules III and IV are limited to five refills or six months from date of issue, whichever comes first.

(2) If the practitioner is not available and in the professional judgment of the pharmacist an emergency need for the refill of a prescription drug has been demonstrated, the pharmacist may dispense a sufficient quantity of the drug consistent with the dosage regimen, provided it is not a controlled substance, to last until a practitioner can be contacted for authorization, but not to exceed a 72-hour supply. The practitioner shall be promptly notified of the emergency refill.

(3) Each refilling of a prescription must be accurately documented, readily retrievable, and uniformly maintained for three years. This record must include.;

(a) The identity of the responsible pharmacist;

(b) Name of the patient;

(c) Name of the medication;

(d) Date of refill; and

(e) Quantity dispensed.

(4) Refill quantities may be combined into a single filling if the prescription is not for a controlled substance or psychotherapeutic drug and the prescriber is notified of the change.

(5) A retail pharmacy may only dispense a prescription refill upon request of the patient or patient's agent. A request specific to each medication is required.

(6) Auto-Refill Programs. A retail pharmacy may only use a program that automatically refills non-controlled prescriptions that have existing refills available and are consistent with the patient's current medication therapy when the following conditions are met:

(a) Authorization for each prescription refill by a patient or patient's agent is received before the pharmacy begins the filling process;

(b) The prescription is not a controlled substance; and

(c) The pharmacy must discontinue auto-refill program enrollment at the request of the patient or patient's agent.

(7) An automated reminder cannot be used to generate a prescription refill unless the patient or patient's agent provides authorization for each individual prescription refill. The content of each reminder must include:

(a) Drug name and strength; and

(b) Date of last fill.

(8) Pick-up notification to a patient or patient's agent may only be generated upon full completion of the prescription refill.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.505 & 689.515
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12; BP 12-2014, f. 12-30-14, cert. ef. 1-1-16

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Rule Caption: Permanently amend Division 110 Fee rules.
Adm. Order No.: BP 13-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 4-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 855-110-0003, 855-110-0005
Subject: Division 110 rules are amended to reflect the fee structure for Pharmacist biennial licensure. The current fee of $120.00 will remain the same for the first biennial renewal cycle. However, the license will be valid for a period of two years, to further reduce the agency's ending balance. Amendments also include the biennial fee for the electronic prescription monitoring fund. In addition, a fee adjustment has been made to Pharmacists whose initial application for licensure is received or the mailing date of the application is within 180 days of expiration. These permanent rule amendments coincide with the transition to Pharmacist biennial licensure and are effective April 1, 2015.

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

855-110-0003
General

(1) All fees paid under these rules are non-refundable.

(2) Fees cannot be prorated.

(3) Fees for initial licensure as a Pharmacist may be reduced to one half of a biennial rate if the application is received or the mailing date of the application is within 180 days of expiration.

(4) A delinquent fee must be paid:

(a) When an application is postmarked after the date specified in these rules; or

(b) When the Board requests additional information from an applicant and this information is not provided within 30 days.

(5) A delinquent fee may be assessed when an application is submitted incomplete and the Board requests the missing information.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.135
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 13-2014, f. 12-30-14, cert. ef. 4-1-15

855-110-0005
Licensing Fees

(1) Pharmacist license examination (NAPLEX) and re-examination fee — $50.

(2) Pharmacist jurisprudence (MPJE) re-examination fee — $25.

(3) Pharmacist licensing by reciprocity fee — $200*. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(4) Pharmacist licensing by score transfer fee — $200*. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)).

(5) Intern license fee. Expires November 30 every two years — $50.

(6) Pharmacist:

(a) Biennial license fee. Expires June 30 each odd numbered year. The biennial license fee is — $120. Delinquent renewal fee, (postmarked after May 31) — $50.

(b) Electronic Prescription Monitoring Fund fee. Due by June 30 biennially— $50. (This is a mandatory fee, required by ORS 431.972 that must be paid with the pharmacist license renewal fee).

(c) Workforce Data Collection fee. Due by June 30 biennially — $5. (This is a mandatory fee, it may be charged annually at $2.50 per year as required by OAR 409-026-0130 that must be paid with the pharmacist license renewal fee.

(7) Certification of approved provider of continuing education course fee, none at this time.

(8)(a) Pharmacy Technician license fee. (This is a one year non-renewable license unless under the age of 19).— $50.

(b) Under 19 years of age expires September 30 annually — $50. Delinquent renewal fee, (postmarked after August 31) — $20.

(9) Certified Pharmacy Technician:

(a) License fee. Expires September 30 annually — $50. Delinquent renewal fee, (postmarked after August 31) — $20.

(b) Workforce Data Collection fee. Due by June 30 biennially — $5. (This is a mandatory fee, it may be charged annually at $2.50 per year as required by OAR 409-026-0130 that must be paid with the Certified Pharmacy Technician license renewal fee.

Stat. Auth.: ORS 689.205 & 291.055 & 183.705
Stats. Implemented: ORS 689.135, 431.972 & 676.410
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1988, f. & cert. ef. 5-23-88; PB 7-1989, f. & cert. ef. 5-1-89; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2006, f. & cert. ef. 6-9-06; BP 5-2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; BP 9-2006, f. & cert. ef. 12-19-06; BP 5-2009, f. & cert. ef. 12-24-09; BP 5-2010(Temp), f. 5-3-10, cert. ef. 5-4-10 thru 10-30-10; BP 6-2010, f. & cert. ef. 6-29-10; BP 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; BP 8-2011, f. & cert. ef. 12-15-11; BP 2-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 9-28-13; BP 3-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-28-13; BP 4-2013(Temp), f. & cert. ef. 7-9-13 thru 1-5-14; BP 7-2013, f. & cert. ef. 9-23-13; BP 1-2014, f. & cert. ef. 1-3-14; BP 13-2014, f. 12-30-14, cert. ef. 4-1-15

Bureau of Labor and Industries
Chapter 839

Rule Caption: Amending rule regarding agency response to objections to investigative subpoenas.
Adm. Order No.: BLI 1-2015(Temp)
Filed with Sec. of State: 1-5-2015
Certified to be Effective: 1-6-15 thru 7-4-15
Notice Publication Date:
Rules Amended: 839-002-0065
Subject: Amending rule regarding agency response to objections to investigative subpoenas.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-002-0065
Response to Objections

(1) The Division serving a subpoena will respond in writing within seven calendar days of receiving objections from a person receiving the subpoena that:

(a) Alleges grounds stated in OAR 839-002-0060(1); and

(b) Is timely received under the requirements of OAR 839-002-0060(2).

(2) In its response the Division will address the specific objections raised.

(3) The Division may at its discretion prior to or upon the seventh calendar day to respond, engage in communication with the person objecting to the subpoena to determine whether the Division's objective and the objecting person's concerns can be addressed without enforcing the subpoena as provided in OAR 839-002-0080.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800
Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08; BLI 33-2008, f. 10-22-08, cert. ef. 10-25-08; BLI 13-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 1-2015(Temp), f. 1-5-15, cert. ef. 1-6-15 thru 7-4-15

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Department of Administrative Services
Chapter 125

Rule Caption: Adopts and Amends Department of Administrative Services Public Contracting Rules
Adm. Order No.: DAS 3-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 125-248-0270
Rules Amended: 125-246-0110, 125-246-0165, 125-246-0170, 125-246-0316, 125-246-0318, 125-246-0330, 125-246-0333, 125-246-0350, 125-246-0351, 125-247-0110, 125-247-0200, 125-247-0287, 125-247-0296, 125-247-0690, 125-247-0805, 125-248-0100
Subject: Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2014, the Legislature made changes to select sections of the Code. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed in this filing.
Rules Coordinator: Janet Chambers—(503) 378-5522

125-246-0110
Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business", (also known as the Director of Economic & Business Equity), means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity), according to ORS 200.025.

(5) An "Administrator" or "Administering Contracting Agency" is defined in OAR 125-246-0400.

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) "Agreement to Agree" means a Price Agreement as defined in Subsection (109).

(10) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of OAR 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(11) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect.

(12) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100(2).

(13) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(14) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see 125-246-0170 only.

(15) "Award" means the Agency's identification of the Person(s) with whom the Agency intends to enter into a Contract.

(16) "Bid" means a Written response to an Invitation to Bid.

(17) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(18) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(19) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names,

makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(20) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(21) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules, or the Chief Procurement Officer's delegate.

(22) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Goods or Services.

(23) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.

(27) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(29) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(30) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

(a) The time the Contract is signed by all parties until;

(b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(39) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(40) "Cooperative Procurement" is defined in OAR 125-246-0400.

(41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.

(42) "Days" means calendar days.

(43) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.

(44) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.

(45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(49) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(58) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(59) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

(A) In the judicial department or the legislative department;

(B) Local governments; or

(C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(60) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(61) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(62) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(63) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(64) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(65) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(66) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(67) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(68) "Goods and Services" or "Goods or Services" is defined in ORS 279A.010 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(69) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a

recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(70) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(71) "Informal Selection" means the procedure according to OAR 125-248-0210.

(72) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(73) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400.

(74) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with 279B.055, 279B.070 or 279C.335.

(75) "Joint Cooperative Procurement" is defined in OAR 125-246-0400.

(76) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(77) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(78) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(79) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(80) "Legislative Department" is defined in ORS 174.114 and, subject to 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(81) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(82) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(83) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(84) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(85) "Multistepped" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR division 247.

(86) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(87) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(88) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(89) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(90) "OAR" means the Oregon Administrative Rules.

(91) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(92) "Offeror" means a Person who submits an Offer

(93) "Offering" means a Bid, Proposal, or Quote.

(94) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(95) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer.

(96) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(97) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these

Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(98) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(99) "Original Contract" means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(100) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the Department, as further described in OAR 125-246-0500.

(101) "ORS" means the Oregon Revised Statutes.

(102) "Participant" is defined in OAR 125-246-0400.

(103) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400.

(104) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(105) "Personal Services" under ORS 279B means services that require specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" under ORS 279C includes the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(106) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(107) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(108) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(109) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(110) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(111) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(112) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(113) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(114) "Property" is defined in ORS 279A.250 and means personal property.

(115) "Proposal" means a Written response to a Request for Proposals.

(116) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(117) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(118) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(119) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(120) "Public Body" is defined in ORS 174.109, subject to 174.108, and means state government bodies, local government bodies and special government bodies.

(121) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(122) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(123) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(124) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(125) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(126) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(127) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(128) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services Contracts.

(129) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(130) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(131) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(132) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(133) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(134) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(135) "Related Services" is defined in ORS 279C.100(8).

(136) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with 279B.060, 279B.070 or 279C.405 and related rules.

(137) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(138) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(139) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "Resident Bidder."

(140) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(141) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under 125-247-0575 or 125-249-0370.

(142) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(143) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under 125-247-0575 or 125-249-0370, respectively.

(144) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(145) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(146) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(147) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable Solicitation requirements.

(148) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(149) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(150) "Rules" means these Public Contracting Rules of the Department including divisions 246 through 249, unless otherwise indicated.

(151) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(152) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(153) "Serial Negotiation" means a Negotiation that is sequential, ongoing, consecutive, alternating, or repetitive.

(154) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(155) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(156) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(157) "Small Procurement" means a sourcing method according to ORS 279B.065.

(158) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(159) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

(160) "Solicitation Document" means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(161) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this

Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(162) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(163) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(164) "State" means the State of Oregon.

(165) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(166) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(167) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(168) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(169) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(170) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of $10,000 to $150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(171) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(172) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(173) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(174) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(175) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(176) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(177) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(178) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0165

Delegation Policy and Procedures

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

(A) Policy of the Code;

(B) Individual Representation;

(C) Forms of Delegations and Revocations of Authority;

(D) Changes in Individual Representation;

(E) Procedural Requirements;

(F) Signature; and

(G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not delegate authority. All delegations by authority under the Rules are found solely in 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegatees must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

(a) OAR 125-246-0170 by the Director of the Department;

(b) A Written external or internal policy by an authorized delegator or revoker;

(c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(d) A letter or memorandum signed by an authorized delegator or revoker.

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the Chief Procurement Officer within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, a Delegation may be modified or revoked by:

(i) The Director of the Department,

(ii) The Chief Procurement Officer in accordance with OAR 125-246-0170(3)(b)(D) and 125-246-0170(3)(d)(J), or

(iii) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

(i) This modification or revocation of a Delegation must be Writing;

(ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(iii) This modification or revocation of a Delegation must be based upon a determination.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as provided in 125-246-0170(2)(a)(B)(i).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the Chief Procurement Officer for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

(a) The nature of the Supplies and Services to be provided;

(b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;

(c) The Agency's Procurement and public contracting past performance;

(d) Department's resources to exercise the authority if it is not delegated; and

(e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under section (9) of this rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Deficiencies evidenced by performance audits performed by the Department, the Secretary of State, or the Legislative Assembly.

(c) Failure to comply with the Department training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;

(d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(e) The available resources of the Department to conduct the purchasing activities if authority is revoked; and

(f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the Department and the Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stat. Implemented: ORS 279A.050, 279A.075 & 279A.140
Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0170
Delegation of Authority

(1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in section (2) of this rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director of the Department delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the Chief Procurement Officer.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation

plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in subsection (2)(d)(L), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this section (2), except as provided in subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms.

If the Designated Procurement Officer is unable to make a Commitment of Funds as described in OAR 125-246-0165(8), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of $10,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than $10,000 and not exceeding $150,000, and Amendments of Contracts resulting from Intermediate Procurements, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed $100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding $150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding $150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding $150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding $150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding $150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding $150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the Department on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite subsection (2)(c)(L)(i) through (iv) above, this Delegation by subsection (2)(c)(L) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the Department on behalf of Agencies, Amendments when the amended value of Contract exceeds $150,000; and terminations of such Contracts when the amended value of such Contract exceeds $150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0400, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of $150,000, including all Amendments, according to OAR 125-247-0805;

(iii) No such Procurement of Public Improvements exceeds $100,000, including Amendments according to OAR 125-249-0160 and 125-249-0910; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding $150,000 or according to a delegation agreement with the Chief Procurement Officer , and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments according to OAR 125-247-0805;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding $150,000 and according to OAR 125-247-0691.

(Q) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800.

(R) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, 279C.450, 200.065(5), and 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(I) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(J) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(K) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(L) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(M) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(N) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(O) Approve procurement-related activities required by other law; and

(P) Other procurement actions of the Department specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, in accordance with OAR 125-246-0165(9);

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with OAR 125-246-0165(10);

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies not to exceed $10,000 according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than $10,000 and not exceeding $150,000, and Amendments of Contracts resulting from Intermediate Procurements, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed $100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691;

(I) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800;

(J) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in section (2); and

(K) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(4) Delegation to the Department Procurement Services Manager.

(a) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Department Procurement Services Manager for the following Procurements, including Contract Administration:

(A) Strategic Sourcing: Cooperative Procurements and Statewide Price Agreements.

(i) Conduct Statewide Price Agreement Solicitations,

(ii) Award and execute Statewide Price Agreement Contracts, resulting Price Agreement Work Orders, and Statewide Price Agreement Qualified Rehabilitation Facility (QRF) Contracts,

(iii) Procure and administer Cooperative Procurements, including acting as an Administrator or Participant and participating in, sponsoring, conducting or administering Cooperative Procurements in accordance with OAR 125-246-0400,

(iv) Approve Cooperative Procurement Sole Source Justifications as follows:

(I) The Sole Source Request must be submitted through ORPIN and all Approvals must be attached to the ORPIN Request to allow for searching, e-filing, and reporting purposes,

(II) For each Sole Source Request, the reviewer(s) must create a Special Request e-file on an accessible drive and a paper file; evaluate the Request based upon a consideration of the criteria under ORS 279B.075 and related rules; document decision-making; and close the files for each Sole Source Request and Approval.

(B) Agency-Specific Procurements.

(i) Conduct Agency-Specific Solicitations, and "Agency-Specific" means one agency,

(ii) Award and execute Agency-Specific Contracts,

(iii) Execute Agency-Specific Contracts and Agency-Specific QRF Contracts,

(C) All Procurements.

(i) Purchase through the federal General Service Administration Schedule 70 in accordance with OAR 125-246-0360,

(ii) Make Contract amendments and conduct other Contract Administration,

(iii) Receive and resolve protests, except for appeals from a decision of the Chief Procurement Officer or delegate,

(b) Authorities related to Agency Delegation Requests and Approvals. The Director of the Department delegates to the Department Procurement Services Manager the authority to make Delegation Requests on behalf of Agencies and approve Agencies' Delegation Requests in accordance with the following conditions:

(A) The Delegation Requests must be submitted through ORPIN and all Delegation Agreements must be attached to the ORPIN Delegation Requests to allow for searching, e-filing, and reporting purposes,

(B) The Delegation Request and any Agreement relate to:

(i) A specific authority to one agency, not exceeding a cumulative total value of $500,000, and not involving a policy decision, or

(ii) A specific authority to be an administrator for or participant in a cooperative procurement, and not involving a policy decision,

(C) For each Delegation Request, the reviewer(s) must create an e-file on an accessible drive and a paper file; complete the assessment form; evaluate the Request based upon a consideration of the criteria under in OAR 125-246-0165(9); authorize only the use of a procurement method under ORS 279B.055 through 279B.085 (seven sourcing methods) or 279C.330 through 335 (competitive bidding); document decision-making; and close the files for each Delegation Request and Agreement.

(D) All Delegation Requests, Assessments, and Agreements must be in writing and on the same forms as used by the Department Procurement Policy Team.

(c) Approval of Feasibility Determinations. The Director of the Department delegates to the Department Procurement Services Manager the authority to conduct Cost Analyses and approve Feasibility Determinations in accordance with OAR 125-247-0110.

(d) General.

(A) This Delegation of authority under section (4) is not exclusive. The Director of the Department still retains all procurement authority under ORS 279A.140.

(B) This Delegation under section (4) is for the sole purpose of the Department performing procurement services. Except as provided in subsection (4)(b), the authority delegated under Section (4) may not be subdelegated to Agencies.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0316
Lighting Preference Relating to Mercury

Authorized Agencies must comply with ORS 646A.566, including but not limited to:

(1) When making procurement decisions on lighting that contains mercury, an Agency must:

(a) Request information from potential suppliers on mercury content, energy use, lumen output and lighting lifetime;

(b) Issue specifications; and

(c) Favor lighting that contains mercury that meets the mercury content standards established by ORS 646A.564.

(2) After consultation with the Department of Environmental Quality, the Chief Procurement Officer may direct Agencies to use information and issue specifications to favor lighting in accordance with (1), and Agencies must follow the directions, if any.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 646A.566
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0318
Oregon Employment Preference

Authorized Agencies must comply with ORS 279B.112, including but not limited to the following requirements for a discretionary preference:

(1) An Authorized Agency may give a preference to an Offer including a personnel deployment disclosure form (Disclosure Form) that states that the Offeror will employ more workers within Oregon than a competing Offer if the Offers otherwise suit the Agency's specifications for the procurement equally well.

(2) The Agency may state in the solicitation documents for any procurement (Solicitation) that the Agency will consider a Disclosure Form and may give a preference described in section (1) above. Then,

(a) An Offeror may submit a Disclosure Form with its Offer;

(b) If the Agency determines that the Offers suit the Agency's specifications for the procurement equally well, then the Agency may consider any Disclosure Forms submitted with those Offers in evaluating the Offers; and

(c) The Agency may prefer the Offer with a Disclosure Form that indicates that the Offeror will employ more workers within Oregon than a competing Offer, with or without Disclosure Form information.

(3) The Disclosure Form submitted by an Offeror must state:

(a) The number of workers that the Offeror and its subcontractors plan to deploy to perform the work described in the Solicitation;

(b) The number of workers that the Offeror and its first-tier subcontractors will employ within Oregon; and

(c) The number of jobs in each of the categories described in subsections (3)(a) and (b) that would be a newly created job.

(4) The Agency may adopt its own form and contents for the Disclosure Form, unless the Chief Procurement Officer requires Agencies to use an approved form and contents of the Disclosure Form.

(5) The Agency may:

(a) Verify the information stated in the Disclosure Form before awarding a public contract; and

(b) Require that the contractor maintain a minimum number of workers and jobs over the term of the contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.112
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0330
Supplier Requirements

(1) Tax Compliance.

(a) No Contract or other agreement for more than $1,000 may be entered into, renewed or extended with any Person unless the Person certi-

fies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6) and (7).

(b) Agency must determine that a Bidder or Proposer is responsible under ORS 279B.110 and OAR 125-247-0500(1). In order to make this determination, a Bidder or Proposer must demonstrate to the Agency that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS Chapters 316, 317 and 318. The Bidder or Proposer must demonstrate compliance by submitting a signed affidavit that attests, under penalty of perjury, that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state (Affidavit).

(A) Agency may determine which Bidder or Proposer must submit an Affidavit and the timing and manner of the submittal.

(B) Agency may allow the Bidder or Proposer to electronically transmit the Affidavit, and Agency may maintain the electronically transmitted Affidavit in lieu of the original Affidavit.

(C) The Agency Designated Procurement Officer, DAS Chief Procurement Officer, DAS Procurement Services Manager, or delegate may approve the form(s) of the Affidavit.

(D) An Affidavit attests to the Bidder or Proposer's current compliance with tax laws. During the period Bidder or Proposer is in compliance, a Bidder or Proposer may submit a copy of the same Affidavit to multiple Agencies or for multiple Invitations to Bid or Requests for Proposals, and an Agency is not required to obtain a new original Affidavit from a Bidder or Proposer for each Procurement.

(E) The Bidder or Proposer is responsible for determining whether the Bidder or Proposer is in compliance with tax laws. If applicable, compliance with tax laws may not require payment of taxes.

(2) Requirements to Transact Business in Oregon.

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

(c) The statutory requirements for contracting firms to register with the Secretary of State's Office may be subject to a limited number of exceptions under federal law. For example, national banks, when they contract with Authorized Agencies, are not subject to the registration requirement.

(d) The Contractor or Consultant must be registered at the time of the execution of the Contract and thereafter.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140, 279B.110(1) & 279C.105(1)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0333
Independent Contractors

(1) An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Services with Providers who are Independent Contractors.

(2) "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(3) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after determining that the contract will not violate any collective bargaining agreements, an Authorized Agency may contract for Services when:

(a) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(b) An independent and impartial evaluation is required; or

(c) It will be less expensive to contract for the Work.

(4) The Authorized Agency may not use Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(5) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Services, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. Contractors must complete the Independent Contractor Certification either as a contract provision or on a form approved by the Chief Procurement Officer (Independent Contractor Certification). If the Contractor cannot certify Independent Contractor status, the Authorized Agency may not contract with the Contractor using a Services Contract, including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (5)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

(c) If the nature of the Services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name and address. Either the Contract or a separate cover sheet for the Contract must include the Contractor's Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the Designated Procurement Officer of the Authorized Agency approves the Contract upon a determination that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

(g) For compliance with the tax laws in accordance with ORS 279B.110, see OAR 125-246-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0350
Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Chief Procurement Officer Approval. Except as provided in OAR 125-246-0170, the Chief Procurement Officer or delegate must approve all Personal Services Contracts exceeding $150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless:

(a) The Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6); or

(b) The Chief Procurement Officer or delegate authorizes an Authorized Agency to acquire services before obtaining all requisite approvals in accordance with OAR 125-246-0351.

(4) Approval after Legal Sufficiency Review. The Chief Procurement Officer may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the Chief Procurement Officer. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Services, for providing tort liability coverage.

(B) Department, Enterprise Goods and Services Division, Publishing and Distribution, for printing services;

(C) Department, Enterprise Goods and Services Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Chief Information Office, for information-system related and telecommunications services. The Authorized Agency is also encouraged to use the Chief Information Office as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The Chief Procurement Officer approval, when required, is last.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-246-0351
Acquiring Services before Obtaining Requisite Approvals of a Personal Services Contract

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services. "Requisite approvals" are defined in OAR 125-246-0350.

(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(3) The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(4) The Chief Procurement Officer may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the Chief Procurement Officer's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The Chief Procurement Officer will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The Chief Procurement Officer's authorization according to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(5) The Authorized Agency seeking the Chief Procurement Officer's authorization to acquire services before obtaining all requisite approvals must provide:

(a) Written findings to the Chief Procurement Officer that describe the specific recurring circumstances that require the Authorized Agency to take prompt action to protect the interests of the State because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Authorized Agency must also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Authorized Agency will use for the Contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Authorized Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(6) The Chief Procurement Officer after review of the material required by Section (5) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (5)(a) above before obtaining all requisite approvals. If the Chief Procurement Officer provides authorization, the Chief Procurement Officer will do so in Writing, subject to any conditions or limitations the Chief Procurement Officer deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the Chief Procurement Officer may determine are appropriate.

(7) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the Chief Procurement Officer, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the form submitted by the Authorized Agency and approved by the Chief Procurement Officer. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the Chief Procurement Officer's approval.

(8) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(9) The Chief Procurement Officer authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(10) An Authorized Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0110
Feasibility Determination, Cost Analysis and Department Report

(1) The Table of Contents for this Rule is as follows:

(a) Section 2: Generally

(b) Section 3: Feasibility Determination

(c) Section 4: Cost Analysis: Estimation of Agency and Contractor Data

(d) Section 5: Decision: Comparison of Compensation and Other Costs

(e) Section 6: Decision: Comparison of Agency and Contracting Costs

(f) Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, an Authorized Agency must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under sections (4) through (6) of this rule (Cost Analysis).

(b) Responsibilities for the Conduct of the Cost Analysis.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department;

(C) At the Department's request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department must conduct the Cost Analysis for statewide Price Agreement Procurements and Department -specific Procurements.

(c) This Rule applies to a Procurement for Services that the Authorized Agency estimates will result in one or more Contracts with a value that exceeds $250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Amendments. Authorized Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Amendments then increase the estimated contract's value over $250,000, a Cost Analysis is not required at that time.

(e) "Services" has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) "Services" does not include the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 as defined in ORS 279C.100; and

(B) "Services" does not include Client Services, defined as of August 4, 2009, in OAR 125-246-0110, as follows:

(i) "Client" means any individual, family or Provider:

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(IX-a) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(IX-b) Alcohol and drug treatment;

(IX-c) Smoking cessation;

(IX-d) Drugs, prescriptions and non-prescription;

(IX-e) Nursing services and facilities;

(IX-f) Transportation or relocation;

(IX-g) Quality of life, living skills training; or

(IX-h) Personal care; or

(IX-i) Legal services and expert witnesses services;

(IX-j) Religious practices, traditions and services, separately or in any combination thereof; and

(IX-k) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) Feasibility Determination. An Authorized Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Authorized Agency makes Written findings that one or more of the Special Circumstances described in subsection (3)(b) make the Authorized Agency's use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) Approval of Feasibility Determination.

(A) The Designated Procurement Officer or delegate (DPO) of an Authorized Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the Department on behalf of that Agency;

(C) The Department Procurement Services Manager must approve the Feasibility Determination for a statewide Price Agreement Procurement or Department-specific Procurement. At the Department's request, DPOs must cooperate with the Department to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) Special Circumstances. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Authorized Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Authorized Agency. Special Circumstances may include, but are not limited to, the follow circumstances:

(A) Expertise. The DPO approves a determination that the Authorized Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Authorized Agency must compare the Authorized Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) Funding Requirement. The terms under which the Authorized Agency receives a grant or other funds for use in a Procurement require the Authorized Agency to obtain Services through an independent contractor;

(C) Law Requirement. Other state or federal law requires the Authorized Agency to procure Services through an independent contractor;

(D) Real or Personal Property. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) Conflict of Interest; Unbiased Review. The Authorized Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Authorized Agency's existing personnel or persons the Authorized Agency could hire through a regular or ordinary process would not be suitable;

(F) Emergency Procurement. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) Delay. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Authorized Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) Services Completed within Six Months. The Services that the Authorized Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) Procurement File. All written determinations required in this section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) Cost Analysis: Estimation of Agency and Contractor Data.

(a) Costs of Using Authorized Agency's Own Personnel and Resources. The Authorized Agency must estimate the Authorized Agency's cost of performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of the Authorized Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Authorized Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Authorized Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Authorized Agency performed the Services.

(D) Other Information. The Authorized Agency's costs described in this subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the cost to the Authorized Agency of performing the Services. For example, if the Authorized Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Authorized Agency may consider those actual costs in making its estimate.

(b) Costs a Potential Contractor Would Incur. The Authorized Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor's employ-

ees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Authorized Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Authorized Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Authorized Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) Other Information. The potential Contractor's costs described in subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Authorized Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Authorized Agency may use that cost information in estimating the costs of current Services.

(5) Decision: Comparison of Compensation and Other Costs.

(a) The Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The Contractor's estimated costs under subsection (4)(b).

(b) Decision. If the Authorized Agency's costs exceed the Contractor's costs under Subsection (5)(a) for the sole reason that the Contractor's costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Authorized Agency's costs for salaries or wages and benefits under subsection (4)(a)(A), then the Authorized Agency may not conduct the Procurement.

(6) Decision: Comparison of Agency and Contracting Costs.

(a) If subsection (5)(b) does not apply, the Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Authorized Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under subsection (4)(b). If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) Decision. If the Authorized Agency's Contracting Cost under this section is lower than the Authorized Agency's cost under subsection (4)(a), the Authorized Agency may conduct the Procurement. If the Authorized Agency's Contracting Cost is higher than the Authorized Agency's cost under subsection (4)(a), the Authorized Agency may not conduct the Procurement, unless the Exception of subsection (6)(d) applies

(d) Exception Based on Lack of Agency Personnel and Resources; Reporting. If the Authorized Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Authorized Agency may still conduct the Procurement if, at the time the Authorized Agency intends to conduct the Procurement, the Authorized Agency determines that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services (Exception). When an Authorized Agency conducts a Procurement under this Exception, the Authorized Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services and the basis for the Authorized Agency's decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Authorized Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before the Department conducts a Procurement.

(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Authorized Agency to hire personnel and obtain resources necessary to perform the Services that the Authorized Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Authorized Agency provided to the Emergency Board under Subsection (6)(d)(C).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.030, 279B.033 & 279B.036 (OL Ch. 880, § 4a)
Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0200
Buy Decision and Methods of Source Selection

(1) Buy Decision. The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source). Agency is not required to make a Buy Decision based on the lowest price. See the specific law for the authority to use each Source.

(2) Priority. Agencies must make their Buy Decision in the priority order set forth in subsections (a) through (d) and in accordance with applicable law (Priority). If a higher Priority Source satisfies a Procurement and law requires the use of that Source, the Agency must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.

(a) Surplus Property. Procuring from surplus property promotes the efficient use of existing resources (see OAR 125-050-0100 through 125-050-0400).

(b) Qualified Rehabilitation Facilities (QRFs). Procuring from QRFs assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).

(c) Inmate Labor. See the Oregon Constitution, Article I, Section 41, subsection 11, which encourages the use of inmate work programs.

(d) Statewide Department Price Agreement. Economy and efficiency are promoted through volume and strategic purchases. Some Statewide Department Price Agreements are Mandatory Use Contracts, described in OAR 125-247-0296. To determine if a Price Agreement exists and whether it is mandatory, use ORPIN and perform a "Statewide Contract Search" or an "Award Search" for "active" Contracts. Under ORS 279A.140, DAS has the procurement authority to establish and administer statewide Price Agreements, and according to the terms of each Price Agreement, DAS delegates the procurement authority to the Agencies to use these Statewide Department Price Agreements.

(3) ORS 190 Agreement. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (see OAR 125-246-0365). An Agency may elect to use an ORS 190 Agreement at any time.

(4) Open Market. If sections (2) and (3) do not apply, the Agency may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, related Rules, and policies. See ORS 279AB, OAR 125-246 and 247.

(5) Methods of Source Selection. An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

(a) Competitive Sealed Bidding according to ORS 279B.055;

(b) Competitive Sealed Proposals according to ORS 279B.060;

(c) Small Procurement according to ORS 279B.065;

(d) Intermediate Procurement according to ORS 279B.070;

(e) Sole-Source Procurement according to ORS 279B.075;

(f) Emergency Procurement according to ORS 279B.080; or

(g) Special Procurement according to ORS 279B.085. A Cooperative Procurement in accordance with OAR 125-246-0400 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval of its new or amended Special Procurement from the Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The Chief Procurement Officer may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the Department instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.070 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

(12) Reporting. An Authorized Agency must comply with ORS 279A.165, including but not limited to:

(a) Application. This section (12) applies to all Special Procurements advertised or otherwise solicited on or after January 1, 2012.

(b) Records. An Authorized Agency must maintain records about its Special Procurements that enable the Agency to determine and provide to the Chief Procurement Officer at least the following information:

(A) The name of the Agency that conducted each Special Procurement;

(B) The number of Special Procurements the Agency conducted;

(C) The number of contracts awarded through each Special Procurement;

(D) A summary of the reasons that the Agency decided to conduct each Special Procurement;

(E) A descriptive summary of the procurement procedure used to conduct the Special Procurement, noting whether the procedure was competitive or not;

(F) A listing of the number of Offers the Agency received if the Special Procurement procedure was competitive;

(G) The contract price or estimated contract price for each contract awarded through a Special Procurement;

(H) A summary of the protests or other responses to the approval of each Special Procurement that the Agency received; and

(I) A summary of the disposition of the protests or other responses described in subsection 12(b)(H).

(c) Reports. Authorized Agencies must provide to the Chief Procurement Officer the information in section (12)(b) of this rule.

(A) Form. Agencies must report on a form approved by the Chief Procurement Officer.

(B) Timing. Agencies must deliver regular reports on the approved form to the Chief Procurement Officer no later than the dates announced by the Chief Procurement Officer.

(d) Section (12) of this Rule is effective on the date of the filing of this amended Rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.165 & 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0296

Price Agreements and Mandatory Use Contracts

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the Chief Procurement Officer.

(4) Despite section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the Contract Administrator of the Mandatory Use Contract.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0690
Policy

(1) As provided in ORS 279B.205 and consistent with 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency's needs. Subject to 279B.405, the specification content must be determined in the sole discretion of the Agency.

(2) Contractor Advantage; General.

(a) Policy. As provided in ORS 279B.210, it is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, Agencies may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the Agencies contract, as set forth in ORS 279B.210.

(b) Application. In the event of conflict or ambiguity arising from the general requirements of section (2) of this Rule and the specific requirements of section (3) of this Rule, the specific requirements take precedence over the general requirements.

(3) Contractor Advantage; Services Contract; Exception. An Authorized Agency must comply with ORS 279B.040, including but not limited to the following:

(a) No Appearance of Contractor Advantage. If an Agency enters into a contract with a contractor to advise or assist the Agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials (Solicitation Materials) related to a procurement (Procurement), the Agency may not accept an Offer from that contractor or its affiliate that is related to the Procurement, if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in the Procurement."Affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(b) Exception.

(A) Before awarding a contract for the advice or assistance of a contractor described in subsection (3)(a), the Agency must request an exception from the Chief Procurement Officer, if the Agency wishes to later accept an Offer from the Provider.

(B) The Agency's request for the exception must include sufficient findings of fact and justifications that will enable the Chief Procurement Officer to make an independent judgment.

(C) The Chief Procurement Officer must determine whether:

(i) The Agency needs advice or assistance from a contractor to develop the Solicitation Materials;

(ii) Accepting an Offer from the contractor that gives the advice or assistance is the only practicable way in which the Agency can conduct the Procurement successfully; and

(iii) Approving the exception:

(I) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(II) Is reasonably expected to result in substantial cost savings to the Agency; or the public or otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the prohibition described in subsection (3)(a).

(D) If the Chief Procurement Officer approves the Agency's request, the Chief Procurement Officer must prepare written findings and justifications for the approval.

(E) If the Chief Procurement Officer disapproves the Agency's request, the Chief Procurement Officer must:

(i) State the Chief Procurement Officer's reasons for the disapproval in a written notice to the Agency, and

(ii) Indicate whether the disapproval extends only to the Agency's acceptance of an Offer from a contractor described in Subsection (3)(a) or whether the Chief Procurement Officer also disagrees with the Agency's stated need for advice or assistance from a contractor.

(F) The Chief Procurement Officer's approval or disapproval is final.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.040, 279B.205 & 279B.210
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-247-0805
Amendments to Contracts and Price Agreements

(1) See OAR 137-047-0800.

(2) Regardless of OAR 137-047-0800, Authorized Agencies must comply with the following provisions:

(a) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) Approval.

(A) Authorized Agencies must obtain prior Written approval of the Amendment by the Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, if the cumulative value of the original Contract Price and all Amendments exceeds $150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

(B) The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Solicitation Document and in the Contract its plans for future Amendments, like phases or other expected developments. Standard language used commonly in documents without variation (boilerplate) does not disclose the Agency's plans and expectations for future Amendments.

(C) The Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, must determine and document that the proposed Amendment:

(i) Is not a material change of the essential identity or main purpose of the Original Contract; and

(ii) Does not constitute a new undertaking that should result in a new Procurement. The determination and approval must be included in the Procurement File.

(c) Original Contract. The Original Contract was awarded either:

(A) According to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, or 279A.200 through 279A.220; or

(B) Other statutory law.

(d) Price Agreements. The Department or its delegate may amend a Price Agreement as permitted by the Price Agreement or applicable law.

(e) Intermediate Procurement. See OAR 125-247-0270.

(f) Emergency Procurement. See OAR 125-247-0280.

(g) Small Procurement. See OAR 125-247-0265.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-248-0100
Application

(1) In addition to the general requirements set forth in division 246 of these Rules, the Rules in this division 248 apply to:

(a) The screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, 125-248-0210, and the Formal Selection Procedure, 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) For purposes of these division 248 Rules, the Department adopts the following Model Public Contract Rules: 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0270, 137-048-0300, 137-048-0310, 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

125-248-0270
Price Agreements

See OAR 137-048-0270.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

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Department of Agriculture
Chapter 603

Rule Caption: Prohibits unpermitted movement of poultry products into or out of Douglas County, Oregon.
Adm. Order No.: DOA 15-2014(Temp)
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 12-30-14 thru 6-27-15
Notice Publication Date:
Rules Adopted: 603-011-0800, 603-011-0810, 603-011-0820, 603-011-0830, 603-011-0840
Subject: These rules establish an emergency quarantine in Douglas County, Oregon prohibiting the movement of poultry or poultry products into or out of Douglas County without a permit obtained from the USDA Animal Plant Health Inspection Service. A quarantine is necessary to prevent the spread of Highly Pathogenic Avian Influenza (HPAI) H5N8, the spread of which could seriously prejudice the public health or welfare of the State of Oregon and pose a severe threat to the animal health of the United States.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0800
Highly Pathogenic Avian Influenza (HPAI) H5N8, Emergency Quarantine and Movement Restrictions

The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) confirmed the presence of highly pathogenic avian influenza (HPAI) H5N8 in guinea fowl and chickens in Douglas County, Oregon. HPAI is a high consequence foreign animal disease (FAD) of national concern. If introduced in Oregon, HPAI would result in serious prejudice to the public health, safety or welfare of the state of Oregon and may pose a severe threat to the animal health of the United States, and in some cases, the human health and the economy. HPAI poses a significant threat to poultry agriculture in the state of Oregon and in the United States and is considered to have the highest risk consequences if detections are not controlled. An Emergency Quarantine Order has been issued by the director and is filed with the county clerk in Douglas County. These rules implement the emergency quarantine and apply to all poultry and poultry products going into and out of Douglas County, Oregon.

Stat. Auth.: ORS 561.510-561.600, 596.210, 596.311, 596.331, 596.388-596.416, 596.990, 561.990 & 561.995
Stats. Implemented: ORS 561.510-561.600, 596.210, 596.311, 596.331 & 596.388-596.416
Hist.: DOA 15-2014(Temp), f. & cert. ef. 12-30-14 thru 6-27-15

603-011-0810
Definitions

For the purposes of this section unless the context requires otherwise.

(1) "Director" means the director of the Oregon Department of Agriculture.

(2) "Highly Pathogenic Avian Influenza (HPAI)" means highly pathogenic avian influenza caused by the H5N8 virus.

(3) "Oregon State Veterinarian" means the State Veterinarian appointed by the Director of the Oregon Department of Agriculture as the chief livestock sanitary official of the state.

(4) "Poultry" includes, but is not limited to, chickens, turkeys, waterfowl, pheasants, quail, partridges, grouse, guineas, and peafowl of all ages and their hatching eggs. Other avian species includes all birds not defined as poultry whether to be held in captivity or released from captivity.

(5) "Poultry Products" includes any poultry commodity or material that can spread HPAI including meat (fresh or frozen), blood or meal, feathers, litter/manure and eggs.

(6) USDA means the United States Department of Agriculture and includes the USDA Animal and Plant Health Inspection Service (APHIS).

Stat. Auth.: ORS 561.510-561.600, 596.210, 596.311, 596.331, 596.388-596.416, 596.990, 561.990 & 561.995
Stats. Implemented: ORS 561.510-561.600, 596.210, 596.311, 596.331 & 596.388-596.416
Hist.: DOA 15-2014(Temp), f. & cert. ef. 12-30-14 thru 6-27-15

603-011-0820
Emergency Quarantine Restricting Movement

(1) Area under restriction: The emergency quarantine includes Douglas County Oregon.

(2) Items under restriction: Poultry, poultry products, poultry waste, originating from backyard flocks, commercial flocks or any poultry production facility. Included in this restriction are vehicles that make deliveries of live birds, feed, or equipment to poultry operations of any sort in quarantined areas and then travel into the state of Oregon.

(3) Prohibitions:

(a) Except as provided in subsection (4) below, live or dead poultry, poultry products, poultry waste originating from backyard flocks, commercial flocks or any other poultry production facility may not be transported or otherwise moved into or out of Douglas County. Vehicles, equipment or materials of any type that could transmit HPAI may not be transported or otherwise moved into Oregon from the area under quarantine.

(b) Except as provided in subsection (4) below, no equipment used for the processing of eggs or for the housing, feeding, watering, handling, or otherwise caring for poultry may be transported or otherwise moved into Oregon from the quarantine area.

(c) No commercial vehicle originating from the quarantine area which has transported feed, eggs, or equipment or other materials that could transmit HPAI may leave the area of quarantine unless proof of the cleaning and disinfection of the vehicle and trailer performed immediately prior to traveling to Oregon is provided to the State Veterinarian. This proof must be in writing and must demonstrate that the cleaning and disinfection was performed according to National Animal Health Emergency Management System (NAHEMS) Guidelines: Cleaning and Disinfection, June 2011.

(4) Permit for Movement: No poultry or poultry products originating from backyard flocks, commercial flocks or any other poultry production facility may be transported or otherwise moved into or out of Douglas County without a permit obtained as provided in this subsection.

(a) A VS Form 1-27 Permit for Movement must be obtained from the Permitting Unit of the USDA, APHIS incident management unit.

(b) A VS Form 1-27 Permit must certify that live poultry show no clinical signs of illness.

(c) A VS Form 1-27 Permit must certify that the premises of origin of live poultry have been sampled in accordance with the Foreign Animal Disease Preparedness and Response Plan; APAI Response Plan, September 2011 with negative results for HPAI.

(d) In addition to a Permit for Movement as specified in this subsection, any person seeking to transport poultry or poultry products from the area of quarantine must certify that at least twenty-one days must have

passed since potential exposure of birds to HPAI. If poultry or poultry products are being shipped from the area of quarantine to a terminal destination (slaughter), fourteen days must have elapsed since potential exposure of birds to HPAI.

Stat. Auth.: ORS 561.510-561.600, 596.210, 596.311, 596.331, 596.388-596.416, 596.990, 561.990 & 561.995
Stats. Implemented: ORS 561.510-561.600, 596.210, 596.311, 596.331 & 596.388-596.416
Hist.: DOA 15-2014(Temp), f. & cert. ef. 12-30-14 thru 6-27-15

603-011-0830
Quarantine Powers

(1) In addition to any other lawful authorities, the director may individually quarantine poultry or poultry products as necessary to protect the public health, welfare or safety. The director shall give any person(s) that are subject to quarantine written notice of quarantine by delivering the notice to the person in charge of the property.

(2) Poultry that meets either of the following requirements may be destroyed:

(a) The State Veterinarian, or a veterinarian designated by the state, determines that the poultry is showing signs of HPAI and that there is a probable exposure pathway, and the veterinarian has consulted with the USDA and the State Veterinarian and they concur with the determination, then the poultry must be destroyed.

(b) If the poultry is showing signs of the disease, but there is not a probable exposure pathway, then the poultry must be destroyed if there is a positive test result for the disease. Poultry may be retested for HPAI before the poultry is destroyed upon the discretion of the State Veterinarian.

(3) Poultry must be put to death by humane methods and the carcass(es) disposed of as the State Veterinarian directs. In addition, any infected or exposed poultry products must be destroyed and disposed of as the State Veterinarian directs.

Stat. Auth.: ORS 561.510-561.600, 596.210, 596.311, 596.331, 596.388-596.416, 596.990, 561.990 & 561.995
Stats. Implemented: ORS 561.510-561.600, 596.210, 596.311, 596.331 & 596.388-596.416
Hist.: DOA 15-2014(Temp), f. & cert. ef. 12-30-14 thru 6-27-15

603-011-0840
Violations

(1) It shall be unlawful for any person, firm or corporation to violate either in whole or in part any provision of these rules. In addition to any lawful remedy or penalty, violation of these rules may result in issuance of a civil penalty.

(2) In addition to any other lawful remedy, the court may enter an order compelling an owner or person in charge of the poultry or poultry products to cease and desist resisting the actions of the director even before the owner or person in charge is given an opportunity to appear, if the court is given sufficient information to prove that allowing the owner or person in charge the chance to appear would jeopardize disease eradication and control efforts. However the owner or person in charge may bring suit after the emergency is over.

Stat. Auth.: ORS 561.510-561.600, 596.210, 596.311, 596.331, 596.388-596.416, 596.990, 561.990 & 561.995
Stats. Implemented: ORS 561.510-561.600, 596.210, 596.311, 596.331 & 596.388-596.416
Hist.: DOA 15-2014(Temp), f. & cert. ef. 12-30-14 thru 6-27-15

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Rule Caption: Crucifer blackleg disease requirements moved into one regulation; removes same requirements from rapeseed production districts.
Adm. Order No.: DOA 1-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-13-15
Notice Publication Date: 12-1-2014
Rules Amended: 603-052-0860, 603-052-0861, 603-052-0862, 603-052-0870, 603-052-0880, 603-052-0882, 603-052-0884, 603-052-0886, 603-052-0888, 603-052-0921
Subject: The proposed amendments place all requirements for protection from the crucifer disease blackleg (caused by Leptosphaeria maculans and L. biglobosa) into a single regulation (OAR 603-052-0870) that applies to all Brassicaceae crops planted statewide. Mandatory treatments for fields officially confirmed as infected by this disease have been added as has a mandatory biennial review of 603-052-0870. The regulations pertaining to the rapeseed production districts (OARs 603-052-0880, 603-052-0882, 603-052-0884, 603-052-0886, and 603-052-0888) have been amended to remove references to blackleg. The regulation (603-052-0921) addressing violations of the blackleg and rapeseed production districts requirements, the introductory sections (OARs 603-052-0860 and 603-052-0861) and the definitions (603-052-0862) have been been amended to reflect the previously described changes.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0860
Brassicaceae Production Districts and Rapeseed Control Areas

As provided in ORS 570.405 and 570.450, the Oregon Department of Agriculture may establish control areas for the production of Brassicaceae so as to protect against plant diseases, plant pests or other conditions as may constitute a menace to the horticultural, agricultural or forest industries of Oregon. The Department may also establish the conditions for the production of Brassicaceae including rapeseed, for the general protection of the horticultural, agricultural or forest industries of Oregon by excluding from established control areas Brassica spp. or rapeseed plants that if, not managed in accordance with these rules, may be a menace to such areas and generally to horticultural, agricultural or forest industries.

Stat. Auth.: ORS 561.190, 570.405, & 570.450
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 3-2010, f. & cert. ef. 1-21-10; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0861
General Production Area/Protected Districts

The seeding and growing of Brassicaceae by any person for any purpose in the state of Oregon shall be subject to the regulations of the general production area and, if applicable, a protected district as described in these rules. The Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724.

Stat. Auth.: ORS 561.190, 561.510–561.600, 570.305, 570.405. 570.410–570.415 & 570.450
Stats. Implemented: ORS 570.405–570.415 & 570.450
Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0862
Definitions

Unless the context requires otherwise, the following terms are defined as indicated:

(1) "Blackleg" means the disease of crucifer crops and Brassicaceae species caused by the fungi Leptosphaeria maculans (asexual stage = Phoma lingam) and Leptosphaeria biglobosa.

(2) "Brassicaceae" means any genera and species in the plant family Brassicaceae including, but not limited to, all species of Brassica and Sinapis, and Raphanus sativus.

(3) "Cover crop brassica" means any species of Brassica that is grown as a cover crop and is not allowed to flower.

(4) "Department" means the department of agriculture of the state of Oregon.

(5) "Director" means the director of the department or the Director's duly authorized representative.

(6) "Forage brassica" means any species of Brassica that is grown for animal/livestock feed and is not allowed to flower.

(7) "Person" means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(8) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.

(9) "Rapeseed " means plants of the species Brassica napus, Brassica rapa, Brassica juncea, or other Brassica species grown for the purpose of edible or industrial oil production. Canola is a rapeseed and means any plant of the genus Brassica in which seeds having a high oil content are the primary economically valuable product and that have a high erucic acid content suitable for industrial uses or a low erucic acid content suitable for edible oils.

(10) "Field" For the purpose of this rule a field may include one or more contiguous plots of land managed as a single unit. These plots may be separated by an unimproved farm road, ditch or hedgerow.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450
Stats. Implemented: ORS 570.405 - 570.415 & 570.450
Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0870
General Production Area

All lands in Oregon constitute the General Production Area for the purposes of controlling pests and diseases of Brassicaceae. With the exception of prepackaged seed lots of Brassicaceae of one-half (0.5) ounce or less for home use and transplants for home use, Brassicaceae production in the General Production Area is subject to the following best management practices:

(1) All Brassicaceae seed stock intended for commercial planting that trades in commerce in the General Production Area must be accompanied by an official test stating that the untreated seed is free from blackleg (Leptosphaeria maculans); and

(2) All Brassicaceae seed stock must also be treated prior to planting. Treatment methods approved by the Department for blackleg control include:

(a) Hot water treatment for 25- to 30-minutes at 50°C (122°F); and

(b) Treatment with a fungicide registered for the purpose of treating Brassicaceae seed for blackleg control.

(3) To prevent buildup of blackleg, blackrot, and other diseases and pests, Brassicaceae may not be grown on the same plot of land in two consecutive years or not more than two years in every five.

(4) Brassicaceae crops grown in the General Production Area but transported into or through protected districts are subject to the transport and other requirements of the protected district through which the Brassicaceae is transported.

(5) Any volunteer or uncontrolled Brassicaceae in and around production fields must be rogued out or otherwise eliminated by the producer.

(6) Fields in which blackleg (Leptosphaeria maculans) has been detected and officially confirmed by the Department must be treated in a manner approved by the Department. The Department shall issue a treatment plan to the producer in the form of an Administrative Directive. Such treatments shall be at the expense of the producer or producers, or their responsible agent or agents. The treatment plan may include some or all of the following activities:

(a) Foliar fungicide applications;

(b) Rogueing out infected plant materials;

(c) Post-harvest residue management;

(d) Crop destruction.

(7) The Department and other interested parties shall review these General Production Area requirements biennially for accuracy and effectiveness.

NOTE: Information on laboratories in Oregon approved by the Department for conducting official seed tests is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4620.

Stat. Auth.: ORS 561.190 & 570.405

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0880
Protected Districts; Prohibitions

(1) Growth of rapeseed seed crops for edible or industrial oil production requires special care and isolation. Rapeseed may be grown within the following protected districts only in accordance with those rules governing each protected district, except that rapeseed grown in the Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724. The following are protected districts:

(a) Willamette Valley Protected District;

(b) Central Oregon Protected District;

(c) Northeast Oregon Protected District;

(d) Malheur/Idaho Protected District.

(2) No person shall violate any provision of those rules governing each protected district.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450

Stats. Implemented: ORS 570.405 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 1-2008, f. & cert. ef. 1-7-08; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 3-2010, f. & cert. ef. 1-21-10; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0882
Willamette Valley Protected District

This Willamette Valley Protected District as described in HB2427 (2013) is governed by 2013 Oregon Laws Chapter 724. The Willamette Valley Protected District is as provided in the Oregon Department of Agriculture's (2013) map available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4552.

Stat. Auth.: ORS 561.190, 570.305, 570.405, 570.412, 570.415 & 570.450

Stats. Implemented: 2013 HB 2427, ORS 570.305, 570.405, 570.410, 570.412, 570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 9-2014(Temp), f. & cert. ef. 7-7-14 thru 1-3-15; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0884
Central Oregon Protected District

(1) The following area is designated as the Central Oregon Protected Area: the entire counties of Crook, Deschutes and Jefferson.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Central Oregon Protected District except under Research Permit (see 603-052-0901(1)). All rapeseed grown under research permit must meet the following conditions:

(a) Within the Central Oregon Protected District the required isolation distance shall be not less than three miles;

(b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;

(c) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertant spread of rapeseed from the field;

(d) All unbagged loads of rapeseed transported within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and

(e) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450

Stats. Implemented: ORS 570.405 - 570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0886
Northeast Oregon Protected District

(1) The following area is designated as the Northeast Oregon Protected District: the entire counties of Baker, Union and Wallowa, except the following part of Wallowa County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are allowed in the Northeast Oregon Protected District subject to the following requirements:

(a) Within the Northeast Oregon Protected District the required isolation distance from any crops with which rapeseed could cross-pollinate shall be not less than two miles;

(b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;

(c) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of rapeseed from the field;

(d) All unbagged loads of rapeseed transported through or within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and

(e) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450

Stats. Implemented: ORS 570.405 - 570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0888
Malheur/Idaho Protected District

(1) The following area is designated as the Malheur/Idaho Protected District: in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Malheur/Idaho Protected District.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450
Stats. Implemented: ORS 570.405 - 570.415 & 570.450
Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0921
Violations

(1) No person shall violate any control area rule governing the production of Brassicaceae in Oregon.

(2) Consistent with ORS 561.280 and 570.405 and in addition to any other lawful remedy, the Director may bring an action to enjoin the violation or threatened violation of any provision of 570.405 and 570.450 or its rules. Such action may be filed in the circuit court of Marion County or in the county in which the violation or threatened violation occurs or is about to occur. Consistent with applicable law, the relief requested may include, but is not limited to, an order for summary destruction of any rapeseed crop.

(3) Notice of Noncompliance and Plan of Correction. In addition to, or in lieu of, any action to enjoin enforcement of these rules, the Director may issue a Notice of Noncompliance and Plan of Correction to any person.

(a) A Notice of Noncompliance informs the person to whom the notice is directed of the violation, including a reference to the particular statute or administrative rules involved, and the location of the violation;

(b) A Plan of Correction directs the person to whom the plan of correction is directed to perform those actions necessary to comply with the particular statute or administrative rules involved;

(A) Specifies a reasonable period of time by which compliance is to be achieved not to exceed five (5) calendar days after the notice is received;

(B) May include requirements for the person to whom the plan of correction is directed to report the completion of specific actions;

(c) A Notice of Noncompliance and Plan of Correction is issued by the Director, is an order other than contested case for purposes of judicial review, and must be served personally or by registered or certified mail.

(d) Failure to perform any of the requirements of a Plan of Correction may be considered by the Director as a failure to correct the violation within the period of time set for correction by the Director in the Notice of Noncompliance and Plan of Correction and may result in any lawful enforcement including, but not limited to, those remedies described in subsection (2) of this section.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405. 570.410 - 570.415 & 570.450
Stats. Implemented: ORS 570.405 - 570.415 & 570.450
Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

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

Rule Caption: Discipline against Oregon Inspector Certification in Conjunction with Discipline against any Building Inspection Certification.
Adm. Order No.: BCD 14-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 918-098-1505
Rules Repealed: 918-098-1505(T)
Subject: The Building Codes Division (Division) adopted inspector certification rules in 2005 that require an individual to hold an Oregon Inspector Certification in addition to any appropriate Oregon Code Certification or International Code Certification. The purpose was to create a central certification which the Division could regulate and use to hold certified inspectors accountable. Concern was raised that the rules do not clearly connect the purpose of the Oregon Inspector Certification to the enforcement powers granted the Division in ORS 455.740.

On August 26, 2014, a temporary rule was adopted which clarified that any grounds for enforcement action against any building inspection program certification held by an individual is also grounds for action against the Oregon Inspector Certification held by that same individual. The purpose of this rule is to make that clarification permanent.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-098-1505
Oregon Inspector Certification Sanctions

When the Director is authorized to deny, condition, suspend, immediately suspend, revoke, or refuse to renew any building inspection program certification held by an individual, the Director may also deny, condition, suspend, immediately suspend, revoke, or refuse to renew the Oregon Inspector Certification held by that same individual. This rule is applied retroactively from July 7, 2005.

Stat. Auth.: ORS 455.030, 455.055, 455.110, 455.720, 455.730 & 455.740
Stats. Implemented: ORS 455.740
Hist.: BCD 8-2014(Temp), f. & cert. ef. 8-26-14 thru 2-22-15; BCD 14-2014, f. 12-30-14, cert. ef. 1-1-15

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Rule Caption: Adopts 2015 Oregon Amusement Ride and Device Specialty Code
Adm. Order No.: BCD 15-2014
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 918-200-0025, 918-200-0070, 918-200-0100
Subject: These rules adopt minimum safety standards for the manufacture, installation, operation, and maintenance of amusement rides and devices in Oregon by adopting the current provisions of national amusement ride and devices codes and standards. Additionally, the proposed rules include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the division's rules, and which repeal outdated provisions relating to the regulation of bungee devices.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-200-0025
Permits, Inspections and Appeals

(1) All amusement rides and amusement devices must be inspected prior to the issuance or renewal of an operating permit. Any defects identified during the inspection that are dangerous to health or safety must be corrected before the inspector issues an inspection report. Defects that do not present an immediate hazard to the safety of the public or persons using the ride or device, or that may be temporarily corrected by restrictions in the operation of the ride or device, shall be noted as a restriction on the permit application, and the permit then issued. However, such defects must be corrected before the time of renewal of the permit. The operator shall notify the division when the corrections are completed by signing and delivering to the division the copy of the permit application provided for reporting corrections. Upon receipt of the inspection reports and certification that the ride or device complies with ORS 460.310 through 460.410 and these rules, receipt of a certificate of insurance from the insurer of the ride, and receipt of the required fees, the division shall issue a permit to operate the ride or device. The permit shall be attached to each amusement ride or device in a location accessible and clearly visible to persons who may wish to confirm the existence of the permit.

(2) The certificate of insurance required by section (1) of this rule, shall:

(a) Be an original on the standard form issued by the insurance carrier;

(b) Include the insurance policy number, the identifying name and, if available, the model and serial or other identifying number of the ride or device; and

(c) Include a statement that the insurance carrier will give the division 30 days prior notice before the insurance policy is canceled.

(3) Permits shall expire one year from the date of issue and renewal permits shall begin on the date of expiration of the expired permit. Within ninety days prior to expiration of an existing permit, an operator may apply on a division form to renew a permit to operate an amusement ride or device.

(4) The results of the inspection shall be recorded by the inspector on forms furnished by and filed with the division. A copy of the report shall also be provided to the operator.

(5) The division may make unscheduled inspections of previously inspected rides.

(6) Any inspector or representative of the division may issue, in writing, a stop order for any amusement ride or device determined to be hazardous or unsafe. Operation shall not resume until the unsafe conditions are corrected and a reinspection has been performed.

(7) The division may suspend or revoke a permit to operate for failure to conform to the minimum safety requirements contained in these rules or otherwise required by law. Proof of compliance with the requirements of the division for reinstatement shall be based on a reinspection.

(8) If the division proposes to suspend or revoke a permit to operate an amusement ride, it shall provide notice in accordance with ORS 183.415 of its proposed action and the basis for such action. If the operator desires a hearing, the operator shall so notify the division in writing, within 20 days. If the division suspends or refuses to renew a permit on an emergency basis as provided by ORS 183.430(2), the operator may request in writing a hearing within 90 days. If the division refuses to issue a permit on grounds other than failure to pass an inspection, the operator may request in writing a hearing within 60 days. For purposes of this section, the calculation of time for notification or receipt shall be:

(a) When mailed by the division, the date mailed plus two days;

(b) When mailed to the division, the date received by the division, less two days.

(9) Temporary renewal permits may be issued as authorized by ORS 460.330(3) upon written application to the division, and payment of the permit fee. Temporary permits shall be valid for 14 days. If the annual renewal permit is issued prior to expiration of the temporary permit, no additional fee shall be required.

(10) Any person failing to obtain the necessary permits required by this rule shall be subject to an investigative fee. The amount of the investigative fee shall be the average or actual additional cost of ensuring conformance with these rules and shall be in addition to the required permit fees.

Stat. Auth.: ORS 460.355
Stats. Implemented: ORS 460.330 & 455.058
Hist.: DC 13-1982, f. 4-21-82, ef. 4-30-82; Renumbered from 814-060-0100; BCD 1-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 10-1994, f. 4-25-94, cert. ef. 5-1-94; BCD 15-1998, f. 9-30-98, cert. ef. 1-1-99; BCD 15-2014, f. 12-31-14, cert. ef. 1-1-15

918-200-0070
General Standards and Requirements

(1) All codes, standards, and publications adopted by reference in these rules are adopted pursuant to OAR 918-008-0000.

(2) Except for devices and equipment subject to OAR 918-200-0065, amusement rides and devices subject to inspection and permit under these rules shall be manufactured, installed and maintained according to American Society for Testing and Materials (ASTM) Standards and by the additional standards adopted in these rules.

(3) Effective April 1, 2015 the Oregon Amusement Ride and Device Specialty Code consists of the following:

(a) ASTM F1159 — 2011, Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures.

(b) ASTM F1193 — 2014, Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices.

(c) ASTM F1957 — 1999 (2011), Standard Test Method for Composite Foam Hardness — Durometer Hardness.

(d) ASTM F2007 – 2012, Standard Practice for Design, Manufacture, and Operation of Concession Go-Karts and Facilities.

(e) ASTM Standard F2137 – 2013, Standard Practice for Measuring the Dynamic Characteristics of Amusement Rides and Devices.

(f) ASTM Standard F2291 – 2014, Standard Practice for Design of Amusement Rides and Devices.

(g) ASTM F2374 – 2010, Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices.

(h) ASTM F2375 – 2009, Standard Practice for Design, Manufacture, Installation and Testing of Climbing Nets and Netting/Mesh used in Amusement Rides, Devices, Play Areas and Attractions.

(i) ASTM F2460 – 2011, Standard Practice for Special Requirements for Bumper Boats.

(j) ASTM F2959 – 2012, Standard Practice for Special Requirements for Aerial Adventure Courses.

(4) Daily Operating Inspection:

(a) Each amusement ride shall be given a daily operating inspection by the ride operator before any passenger is permitted to ride. Results of these daily inspections shall be recorded and kept on file by the operator for at least two years, and made available upon request by the division;

(b) A ride or device not properly assembled or defective or unsafe in any of its parts, controls, or safety equipment shall not be operated.

(5) Control of Operation:

(a) Amusement devices shall be operated only by ride operators at least 18 years of age;

(b) Every ride operator shall be trained in the use and function of all normal operating controls, signal systems and safety devices applicable to the ride or device and of the proper use, function, capacity and speed of the particular ride or device being operated. A ride operator shall be at the operating controls during operation and shall have complete control of the ride or device at all times the ride is operated for public use. When the ride or device is shut down the controls shall be locked or incapacitated to avoid unauthorized operation;

(c) Except for amusement devices designed to be operated or controlled by a passenger, only trained ride operators shall handle the controls during normal operation.

(6) A ride or device shall not be loaded beyond its rated capacity or operated at an unsafe speed or at any speed greater than that prescribed by the design engineer or manufacturer. When this information is not available, the operator shall develop criteria for safe operating speeds and rated capacity to the satisfaction of the division.

(7) An operator shall report by telephone to the division as soon as practicable, any accident that occurs from the operation of an amusement ride or device, and that results in death, serious injury or property damage in excess of $5,000. A written report shall be filed with the division within five working days following the accident. If the accident is a result of equipment failure, the device shall not be operated until it is inspected by an inspector authorized by these rules to inspect the device.

(8) Public Protection:

(a) An amusement device shall not be operated while any person is in a position to be in danger of harm or injury. Areas of potential danger shall be fenced, barricaded or otherwise guarded;

(b) Amusement rides and devices shall not be assembled, disassembled, or operated in a location that at any time may be nearer to energized overhead power lines than:

(A) For lines rated 600 volts or less, minimum clearance between the lines and any part of a lifting crane, ride structure, concession booth, building or equipment shall be 15 feet;

(B) For lines rated over 600 volts, minimum clearance between the lines and the lifting crane, ride, structure, concession booth, building or equipment shall be 15 feet.

(c) Internal Combustion Power Sources:

(A) Internal combustion power sources shall be of adequate type, design and capacity to handle the design load;

(B) Fuel tanks should be of adequate capacity to permit uninterrupted operation during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day, the ride or device shall be shut down and unloaded or evacuated during the refueling procedure. The fuel supply shall not be replenished while the engines are running;

(C) An enclosed area in which an internal combustion engine is operated shall be ventilated. Exhaust fumes shall be discharged outside the area. The equipment shall be properly grounded;

(D) Internal combustion power sources shall be located in a manner permitting proper maintenance and be protected by guards, fencing or enclosure to prevent exposure to hazard and to secure the equipment from the public;

(E) The operator shall provide and maintain portable fire extinguishers of the classification, capacity and number prescribed by the State Fire Marshal;

(F) Liquid petroleum gas employed either as fuel for internal combustion engines, for heat, or for illumination shall be stored in a manner approved by the State Fire Marshal;

(G) All flammable liquids shall be stored and handled according to State Fire Marshal standards. Bulk storage in quantities above 60 gallons shall not be in the area accessible to the public.

(d) Interior and exterior parts with which passengers may come in contact shall be smooth, rounded, free from sharp, rough or splintered edges or corners, and with no protruding screws or projections which might cause injury. Parts upon or against which passengers might be thrown by action of the ride shall be adequately padded to prevent or minimize the possibility of injury.

(9) Electrical Standards:

(a) Code. Permanent electrical conductors and equipment installed on or around permanent and temporary amusement parks, carnivals, amusement rides or devices shall conform to the Oregon Electrical Specialty

Code. Temporary electrical conductors and equipment, and permanent conductors and equipment within permanent rides and devices shall conform to manufacturers' specifications. Electrical equipment and wiring methods in or on rides, concessions or other units shall be provided with mechanical protection where such equipment or wiring methods are subject to physical damage;

(b) Portable Power Outlets and Terminal Boxes. Boxes shall be designed so that no live parts are exposed to accidental contact. Where installed outdoors, the box shall be of weatherproof construction and mounted so that the bottom of the enclosure is not less than six inches above the ground. Boxes shall be kept locked where located in an area accessible to the general public. Receptacles of the grounding type shall have overcurrent protection. Service power shall be connected to the box by receptacles mounted on the exterior walls with safety grounding. Receptacles of the grounding type shall have overcurrent protection within the box. The overcurrent protection shall not exceed the ampere rating of the receptacle, except as permitted for motors. Branch circuits shall include means for equipment grounding and shall connect to receptacles mounted on the box. Exterior openings shall be provided with protective covers, draining eaves or canvas. Conductors fed directly through an opening on the wall of the box shall be color-coded, properly sized, and provided with strain relief. Fuses or breakers shall be secured solidly and all connections within the boxes are to be made with threaded screws and lugs of the proper size. Busbars shall have an ampere rating not less than the overcurrent device supplying the box. Where conductors terminate directly on busbars, busbar connectors shall be provided;

(c) Wiring Methods. Flexible cords and cables shall be permitted for temporary installations provided they are listed for extra hard usage, wet location and be sunlight resistant. Flexible cords and cables supplying power to the disconnecting means of a ride or device shall not be smaller than #10 AWG (American Wire Gauge) and shall contain an equipment-grounding conductor. Metal enclosures of electric equipment and metal frames and metal parts of rides, concessions, trailers, trucks or other equipment that support or contain electrical equipment shall be grounded and bonded to the same source. Single conductor cable shall be permitted only in sizes #2 and larger. Open conductors are prohibited except as part of a listed assembly or for festoon lighting. Flexible cords and cables shall be continuous without splice or taps between boxes or fittings. A box or fitting shall be installed at each connection point, outlet, switchpoint or junction point. Flexible cords or cables run on the ground, where accessible to the public, shall be covered with nonconductive mats. Cables and mats shall be arranged so as not to present a tripping hazard. Cord connectors shall not be laid on the ground in areas traversed by the public. Flexible cords and cables shall be protected from overcurrent at their source of supply;

(d) Disconnecting Means. Each ride and concession shall be provided with a fused disconnect switch or circuit breaker located in an area readily accessible from the operator's station. The disconnecting means shall be readily accessible to the operator, including when the ride is in operation. Where accessible to unqualified persons, the enclosure for the switch or circuit breaker shall be of the lockable type. A shunt trip device that opens the fused disconnect or circuit breaker when a switch located in the ride operator's console is closed shall be a permissible method of opening the circuit.

(e) Power Sources. Electrical power sources shall be located to permit proper maintenance and protected by guards, fencing or enclosures to prevent exposure to the public;

(f) An amusement ride or device constructed before October 1, 1996, which has been issued an operating permit by the Division within the last three years, may be maintained using previously approved electrical materials and methods until the ride or device is rebuilt, subject to major electrical alteration. All other rides or devices without manufacturers' information shall conform to the Oregon Electrical Specialty Code in effect on the date the ride or device was first approved for an operating permit in Oregon.

(10) Stairways, Landings and Ramps.

(a) Safe and adequate means of access to and from amusement rides and devices shall be provided. All passenger ways shall be free from debris, obstruction, projection and other hazards. All floor, ramp and step surfaces shall be constructed and maintained to prevent slipping and tripping. A safe clearance shall be maintained from all mechanical handling equipment;

(b) Adequate stairways or ramps and necessary landings and platforms shall be provided where persons enter or leave a device, ride or structure that is above or below grade or floor level at the entrance to and exit from such. Unless provided by a recognized manufacturer as a part of the amusement ride or device, the design and construction of stairways, ramps, railings and exits shall conform to the Oregon Structural Specialty Code in effect at the time of manufacture. All stairs with more than three risers shall have handrails or railings on both sides regardless of width;

(c) Stairways, landings and ramps shall be designed, constructed and maintained in accordance with the Oregon Structural Specialty Code in effect at the time the ride or device was first issued an operating permit, but so as to sustain safely a live load of at least 90 pounds per square foot;

(d) At least two exits remote from each other shall be provided from each level floor, tier, room or balcony. An entrance may serve as an exit for the purposes of compliance with this rule. All exits shall conform to the Oregon Structural Specialty Code in effect at the time the amusement ride or device was first issued an operating permit in Oregon, but in no case shall be less than 28 inches wide;

(e) Access to and exits from amusement rides and devices and associated structures shall be provided with illumination by natural or artificial means of at least five foot-candles measured at grade level.

(11) Housekeeping:

(a) Cleanliness. A suitable number of containers for refuse shall be provided in and around all amusement rides and devices and associated structures. Excessive accumulations of trash or rubbish shall be promptly removed. All parts of amusement rides or devices and associated structures used by the public shall be kept clean. The area shall be clear and kept free from trash and tripping hazards;

(b) Air Compressors and Equipment. Air compressors, air compressor tanks and related equipment shall be constructed, equipped and maintained to insure safe operation at all times. Air compressor tanks and other air receivers used with air compressors shall be operated and maintained in compliance with applicable provisions of ORS 480.510 through 480.665 and the rules adopted by the Oregon Board of Boiler Rules;

(c) Oil and Hydraulic Systems. Oil and hydraulic systems and other related equipment used in connection with amusement devices shall be free of leaks and shall be maintained to insure safe operation at all times;

(d) Machinery and Machine Guarding. Machinery used in or with an amusement device shall be enclosed, barricaded or otherwise effectively guarded against contact. Guards removed for maintenance shall be replaced before normal operation is resumed. One or more methods of machine guarding shall be provided to protect the public from injury. Guards shall be fixed to the machine where possible and secured elsewhere if attachment to the machine is not possible. The guard or barrier shall not offer an accident hazard in itself. Barriers shall be secured to prevent movement or tipover. The barriers shall be located to keep the public at a safe distance from the ride. All machinery designed for a fixed location shall be secured;

(e) Mechanical Power Transmission. All power transmission devices and associated moving parts shall be shielded, enclosed or barricaded to protect the public or shall be sufficiently distant to prevent hazard;

(f) Welding, Cutting and Brazing. Welding, cutting or brazing shall not be performed where the public can directly observe the process or be hit by sparks of flying materials. Any welding, cutting and brazing performed when the public is present shall be behind temporary solid barriers.

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

Stat. Auth.: ORS 460.355

Stats. Implemented: ORS 460.355

Hist.: DC 13-1982, f. 4-21-82, ef. 4-30-82; Renumbered from 814-060-0200; BCD 10-1994, f. 4-25-94, cert. ef. 5-1-94; BCD 15-1998, f. 9-30-98, cert. ef. 1-1-99; BCD 15-2014, f. 12-31-14, cert. ef. 1-1-15

918-200-0100
Bungee Jumping

Except for jumps from towers or devices specifically engineered and designed for reverse jumping or catapulting, "bungee catapulting," "negative jumping," "reverse jumping," "launching," "tandem, double or multiple jumping," or "sandbagging" shall not be permitted.

Stat. Auth.: ORS 460.355

Stats. Implemented: ORS 460.355

Hist.: BCD 10-1994, f. 4-25-94, cert. ef. 5-1-94; BCD 15-2014, f. 12-31-14, cert. ef. 1-1-15

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Department of Consumer and Business Services, Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Corrects administrative rule filing governing mortgage lending activities that occurred in August 2014.
Adm. Order No.: FCS 9-2014
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 441-860-0085, 441-860-0090

Rules Ren. & Amend: 441-875-0075 to 441-870-0075
Subject: On September 16, 2014, the Department of Consumer and Business Services adopted numerous changes to the administrative rules governing mortgage lending, though implementation of the rules was delayed until January 1, 2015. Unfortunately, the department inadvertently omitted citations to two amended rules that revised bonding calculations from the original notice, even though the original statement of need and fiscal impact addressed them. Additionally, the original notice proposed the adoption of OAR 441-875-0075 - which deemed filing false reports of condition as a dishonest, fraudulent or illegal practice or conduct - though the rule was meant to be codified in chapter 441, division 870. This limited rulemaking activity adopts amendments to 441-860-0085 and 441-860-0090, as well as renumbering 441-875-0075 to 441-870-0075.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-860-0085
Corporate Surety Bond for Mortgage Bankers or Mortgage Brokers Acting as or Employing a Mortgage Loan Originator

(1) This rule applies to a mortgage banker or mortgage broker licensed under ORS 86A.095 through 86A.198 and OAR chapter 441, division 860 that either acts as the applicant's sole mortgage loan originator or employs one or more mortgage loan originators. A mortgage banker or mortgage broker must maintain a corporate surety bond during the time the person acts as a mortgage loan originator or during the time the person employs a mortgage loan originator.

(2) The corporate surety bond must be in a form and on terms approved by the director and shall be renewed or replaced each calendar year. The corporate surety bond shall be delivered to the director by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond before October 1 of each calendar year.

(3) The corporate surety bond must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker or mortgage broker. A consumer must file a claim against the corporate surety bond before the bond expires as described in this section.

(4) At least five years after a person ceases to be licensed as a mortgage banker or mortgage broker, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond.

(5) The sum of the corporate surety bond must be calculated based on the sum of the dollar amount of direct and third party loans reported as closed and funded as reported on the Oregon residential mortgage lending activity reports submitted under OAR 441-865-0025 for quarters two, three and four of the previous year and the first quarter of the current year, or as many such quarters as have or should have been filed as of September 1 of the current year. The calculation is then used to determine the sum of the corporate surety bond as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond must be in the amount of $50,000.

(b) For a person making or negotiating less than $10,000,000 in residential mortgage loans in Oregon, the corporate surety bond must be in the amount of $50,000.

(c) For a person making or negotiating $10,000,000 or more but less than $25,000,000 in residential mortgage loans in Oregon, the corporate surety bond must be in the amount of $75,000.

(d) For a person making or negotiating $25,000,000 or more but less than $50,000,000 in mortgage loans in Oregon, the corporate surety bond must be in the amount of $100,000.

(e) For a person making or negotiating $50,000,000 or more but less than $100,000,000 in residential mortgage loans in Oregon, the corporate surety bond must be in the amount of $150,000.

(f) For a person making or negotiating $100,000,000 or more in residential mortgage loans in Oregon, the corporate surety bond must be in the amount of $200,000.

Stat. Auth.: ORS 86A.242
Stats. Implemented: ORS 86A.227
Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef 8-1-12; FCS 9-2014, f. 12-23-14, cert. ef. 1-1-15

441-860-0090
Corporate Surety Bond or Irrevocable Letter of Credit for Mortgage Bankers Not Employing Mortgage Loan Originators

(1) Every applicant for a license as a mortgage banker who will not act as or employ a mortgage loan originator and does not take an application for a residential mortgage loan, or offer or negotiate terms for a residential mortgage loan must file a corporate surety bond or irrevocable letter of credit with the director as specified in this rule in a form and on terms approved by the director. The corporate surety bond shall be renewed or replaced each calendar year. The corporate surety bond or irrevocable letter of credit shall be delivered to the director by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond or irrevocable letter of credit before October 1 of each calendar year.

(2) Every person licensed as a mortgage banker must maintain a corporate surety bond or irrevocable letter of credit as specified in this rule during the time the mortgage banker or mortgage broker is licensed but does not act as or employ a mortgage loan originator. The corporate surety bond or irrevocable letter of credit must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker. A consumer must file a claim against the corporate surety bond or irrevocable letter of credit before the corporate surety bond or irrevocable letter of credit expires as described in this section.

(3) At least five years after a person ceases to be licensed as a mortgage banker, the person or the writer of the corporate surety bond or irrevocable letter of credit may apply to the director for release of the corporate surety bond or irrevocable letter of credit. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond or irrevocable letter of credit.

(4) The corporate surety bond or irrevocable letter of credit must be calculated based on the previous four quarterly residential reports of condition submitted under OAR 441-865-0025. The sum of the corporate surety bond or irrevocable letter of credit must be determined as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond or irrevocable letter of credit must be in the amount of $50,000.

(b) For a person making or negotiating less than $10,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of $50,000.

(c) For a person making or negotiating $10,000,000 or more but less than $25,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of $75,000.

(d) For a person making or negotiating $25,000,000 or more but less than $50,000,000 in mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of $100,000.

(e) For a person making or negotiating $50,000,000 or more but less than $100,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of $150,000.

(f) For a person making or negotiating $100,000,000 or more in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of $200,000.

Stat. Auth.: ORS 86A.136
Stats. Implemented: ORS 86A.106
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef 8-1-12; FCS 9-2014, f. 12-23-14, cert. ef. 1-1-15

441-870-0075
Filing False Reports of Condition

A dishonest, fraudulent or illegal practice or conduct under ORS 86A.115 includes reporting false or incorrect information on a report of condition filed under OAR 441-865-0025. A mortgage banker or mortgage broker who corrects an incorrect report of condition to the satisfaction of the director within 30 days of notice from the director that the information is incorrect is not subject to this rule.

Stat. Auth: ORS 86A.136
Stat. Implemented: ORS 86A.106 & 86A.239
FCS 5-2014, f. 9-18-14, cert. ef. 1-1-15; Renumbered from 441-875-0075 by FCS 9-2014, f. 12-23-14, cert. ef. 1-1-15

Rule Caption: Establishes a securities registration exemption for Oregon intrastate offerings by Oregon small businesses.
Adm. Order No.: FCS 1-2015
Filed with Sec. of State: 1-15-2015
Certified to be Effective: 1-15-15
Notice Publication Date: 11-1-2014
Rules Adopted: 441-035-0070, 441-035-0080, 441-035-0090, 441-035-0100, 441-035-0110, 441-035-0120, 441-035-0130, 441-035-0140, 441-035-0150, 441-035-0160, 441-035-0170, 441-035-0180, 441-035-0190, 441-035-0200, 441-035-0210, 441-035-0220, 441-035-0230
Subject: Title III of the Jumpstart Our Business Startups Act (JOBS Act), enacted in 2012, created a federal exemption for equity crowdfunding. Federal rules under the JOBS exemption have not yet been finalized. Under the federal intrastate exemption, Oregon may enact its own exemption from securities registration for purely domestic offerings unrelated to federal law. ORS 59.035(15) provides that the Director of the Department of Consumer and Business Services may create transactional exemptions for securities through rule. This rulemaking establishes an exemption for small amounts raised by Oregon small businesses through a "community public offering" or what is generally referred to as "crowdfunding". The rules place certain substantive restrictions on Oregon businesses relying on the exemption, such as individual investor and total offering caps. The rulemaking activity also requires disclosures be given to prospective investors and places restrictions on general advertising of the securities to the public.
Rules Coordinator: Jenny Craig—(503) 947-7484

441-035-0070
Policy and Purpose of the Oregon Intrastate Offering Exemption (OIO)

Crowdfunding, or raising money through small investments from a large number of investors can provide smaller enterprises access to capital for new or expanded business ventures. OAR 441-035-0070 through 441-035-0230, provide an exemption from the securities registration requirements under ORS 59.055 in limited circumstances in order to facilitate investment by Oregon residents in Oregon businesses while protecting investors.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0080
Definitions

For purposes of OAR 441-035-0070 through OAR441-035-0230, the following definitions apply unless the context requires otherwise:

(1) "Business Technical Service Provider" means a Small Business Development Center as defined in OAR 123-022-0070, an Economic Development District as defined in 13 CFR 304.1, or a not-for-profit incubator, accelerator, or business resource provider approved by the Director.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Issuer" has the same meaning as that term is defined in ORS 59.015(9). For the purposes of these rules, "issuer" includes persons with direct control over the Oregon business or over the offer or sale of securities exempted under these rules.

(4) "Offer" includes every attempt to dispose of an OIO security for value. The publication of any information and statements, and publicity efforts — including any advertising materials — in advance of or in connection with an OIO that contributes to the conditioning of the public mind or arousing public interest in the issuer or is intended to arouse public interest investing in the issuer or purchasing its securities — even though it does not contain an express "offer" — is an "offer" of OIO securities for purposes of this definition.

(5) "Offering Documents" means the representations and disclosures required under OAR 441-035-0120.

(6) "Oregon business" means a business formed under the laws of Oregon and registered with the Secretary of State of Oregon as a domestic business, with its principal office in Oregon, doing business in the state and having 50 or fewer employees.

(7) "Third Party Platform Provider" means an internet based platform provided by a business technical service provider or other entity authorized by the Director to post, on behalf of issuers, information related to OIOs to interested persons who certify Oregon residency.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0090
Requirements for Exemption From Securities Registration

The offer or sale of an OIO by an issuer shall be exempt from the securities registration requirements under ORS 59.055 if the offer or sale is conducted in accordance with the following:

(1) The issuer must be an existing Oregon business in good standing. The OIO exemption cannot be applied if the issuer, or a person affiliated with the issuer, would be disqualified under OAR 441-035-0210.

(2) The offer and sale must be conducted in accordance with section 3(a)(11) of the Securities Act of 1933, as amended. For purposes of this requirement, it is sufficient that the offer and sale complies with Rule 147 under section 3(a)(11).

(3)(a) OIO securities may only be offered or sold to natural persons who are residents of the state of Oregon.

(b) Prior to making any offer under this exemption, an interested person must make an affirmative declaration to the issuer or third party platform that they are an Oregon resident;

(c) Prior to any sale under the OIO exemption, the issuer must have a reasonable documentary basis to believe the prospective purchaser is a resident of Oregon and obtained the signed acknowledgement required under OAR 441-035-0120(4). A reasonable documentary basis includes, but is not limited to:

(A) A current Oregon Driver License or a current personal identification card issued by the State of Oregon; or

(B) A document that indicates the prospective purchaser owns or occupies property in the state as his or her principal residence, such as a current voter registration, or official business mail from a state or federal agency.

(4) The duration of an OIO will not exceed twelve (12) months, unless the issuer applies to extend the offering for a period not to exceed twelve (12) additional months. An issuer may apply to extend the offering by submitting an amended filing with the Director in conformance with these rules.

(5) All proceeds from the sale of OIO securities must be used in accordance with representations made to investors, including the disclosures required under OAR 441-035-0120.

(6) The aggregate purchase price of all OIO securities cannot exceed two hundred fifty thousand dollars ($250,000).

(7) An issuer may not accept more than two thousand five hundred dollars ($2,500) from any individual in reliance on the OIO exemption.

(8) Issuers offering or selling OIO securities must have met in person and reviewed their business plan with a business technical service provider prior to advertising, offering or selling securities.

(9) OIO securities sold pursuant to this exemption are limited to notes, stocks, and debentures.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0100
Resale Limitations

(1) An OIO security may not be resold during the nine (9) month period immediately after purchase, except:

(a) To the issuer; or

(b) Pursuant to an order of registration under ORS 59.065.

(2) After the immediate nine (9) month period has ended, an OIO security may also be sold pursuant to an available exemption to securities registration requirements under ORS 59.025 or 59.035 or accompanying rules.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0110
Required Filings

(1) Not less than seven (7) days prior to the advertisement, offer or sale of any OIO security, the issuer shall file a notice with the Director, in writing, that it plans to conduct an OIO and pay a $200 filing fee.

(2) The notice shall contain the following:

(a) The name(s) and address of the issuer and of all officers, directors, principals, managing partners and shareholders of the Oregon business pos-

sessing a 20% interest or more, or persons holding a substantially similar position.

(b) A copy of any proposed advertising materials, including a URL if a website will be used in connection with the offering, and name of the third party platform provider, if applicable;

(c) A brief description of the business and the specific project or product that is the reason for the offering;

(d) The minimum and maximum amounts issuer is seeking to raise through the offering or total offering amount;

(e) A copy of the offering documents;

(f) A form approved by the Director verifying that the issuer has met in person with a business technical service provider and reviewed the relevant business plan.

(3) The $200 filing fee, which will be used to defray the costs incurred in administering and enforcing these rules, must be made payable to the Department of Consumer and Business Services.

(4) The filing must be signed by the issuer or a duly authorized representative of the issuer certifying that the issuer has verified the material accuracy and completeness of the information.

(5) These filing requirements may be met by submitting a form adopted by the Director or through individual submission of all the information required by the rule.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0120
Required Disclosures

(1) Except as allowed under OAR 441-035-0130, prior to any offer or sale of an OIO security, each prospective investor must be given, in a single written document, the disclosures identified in subsection (2). For the purposes of this exemption, "in writing" includes printed, electronic, and internet media. An interested party must be given the option to receive the disclosures and subsequent reports in one or more formats, including printed copies at no charge.

(2) The disclosures required by these rules must include:

(a) The name(s) and physical address(es) of the issuer and of all officers, principals, managing partners and shareholders of the issuer holding a 20% interest or more, or persons holding a substantially similar position;

(b) A description of the experience and qualifications of the issuer officers, principals, managing partners and persons holding substantially similar positions;

(c) A description of the business, including how long it has been in operation and the specific reason for the offering;

(d) A discussion in plain language of the significant factors material to the offering, including those that make the offering speculative or risky;

(e) The total offering amount and how the issuer expects to use the proceeds of the offering, including compensation and expenses related to the offering.

(f) If an issuer needs to raise a minimum amount to achieve the stated funding goal, they must disclose that minimum offering amount and how the issuer intends to use funds raised through the offering if the minimum goal is not met, or if they intend to return the funds if the goal is not met;

(g) The terms and conditions of the securities being offered, the total amount of securities that are outstanding prior to the OIO, and the total amount of securities being offered or sold in reliance on the OIO exemption:

(A) If the issuer is offering stock, the terms and conditions must include either the percentage of ownership represented by a single share, or the total value of the Oregon business implied by the offering price.

(B) If the issuer is offering notes or debentures, the terms and conditions must include the interest rate and specific terms of repayment.

(h) A description of any litigation or legal proceedings within the past five (5) years, if any, involving the issuer or any persons associated with the issuer.

(3) The issuer must inform all investors that the securities exempted by these rules are not registered with the state, that they are subject to a limitation on re-sale and investors may not be able to sell their securities promptly or may only be able to sell them at a substantial discount from the offering price. Disclosures must also contain the following language on the cover page of the offering document:

"THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER ORS 59.035 OF THE OREGON SECURITIES LAW. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF OREGON AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.
IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.
THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THEY CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. BUSINESS TECHNICAL SERVICE PROVIDERS HAVE NOT REVIEWED THE OFFERING DOCUMENTS AND CANNOT DETERMINE THE MERITS OF THIS OFFERING"

(4) At the time of sale the issuer must require all purchasers to sign the following acknowledgement. For the purposes of this provision, "signed" includes a scanned, faxed or virtual signature:

"I have been provided and have reviewed the complete offering document, including the disclosures. I acknowledge that I am investing in a high-risk, business venture with no guarantee of success, that I may lose all of my investment, and that I can afford the loss of my investment. I understand this offering has not been reviewed by the State, and no authority has expressed an opinion on the merits or accuracy of this offering. By entering into this transaction with the issuer, I am affirmatively representing myself as an Oregon resident."

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0130
Advertising and Solicitation

Issuers and third party platform providers may engage in general advertising or solicitation of OIO securities provided that:

(1) The issuer files a copy of the advertising materials with the Director at least seven (7) days prior to use. The Director may prohibit the use of any advertisement that they consider false or misleading or otherwise not in compliance with these rules.

(2) The advertisement is directed only to Oregon residents. Prior to viewing advertising materials, each person must affirmatively certify that they are an Oregon resident. A person who does not or can not affirmatively certify that they are an Oregon resident may not view the advertising materials.

(3) The advertisement contains no more than the following information:

(a) The name and contact information of the issuer;

(b) A brief description of the general type of business of the issuer;

(c) Whether securities being offered are stocks, notes or debentures or a combination;

(d) The total offering amount;

(e) A description of how the issuer will use the funds;

(f) The duration of the OIO and deadline for raising funds through the offering; and

(g) The issuer's logo;

(h) A link to the issuer's website or the third party platform in which the securities are offered or sold.

(4) Any amendments to the advertising materials are filed with the Director.

(5) The advertisement, including any advertisement through a website, clearly states that the advertisement does not constitute an offer to sell a security and includes contact or other relevant information notifying an interested person how they can obtain the required disclosure information, in writing, free of charge.

(6) Advertising to the general public without regard to residency, or advertising information outside the scope of this rule is prohibited.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0140
Use of Internet General Requirements

(1) Websites that advertise or offer an OIO security must obtain an affirmative declaration from an interested person under 441-035-0090(3)(b) that the interested person is an Oregon resident prior to allowing access to any of the information allowed under OAR 441-035-0130 or to the offering documents under 441-035-0120;

(2) Websites that advertise, offer or sell an OIO security must take reasonable steps to ensure that an investor's financial and personal information is properly secured and kept private and must conform to ORS 646A.622.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0150
Use of the Internet by Issuers

(1) An Oregon business using its existing website must segregate information related to the advertising, offer or sale of OIO securities on a webpage distinct from webpages accessible to the general public.

(2) An issuer may use a webpage to sell securities if the issuer obtains reasonable documentary evidence under 441-035-0090(3)(c) that the prospective purchaser is an Oregon resident prior to the sale.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0160
Use of the Internet by Third Party Platform Providers

(1) A third party platform provider may post advertising materials allowed under OAR 441-035-0130 and offering documents under 441-035-0120 for OIO securities, under the following conditions:

(a) The platform is used to host for not less than five (5) OIO issuers;

(b) The platform does not solicit, sell, or effect transactions in securities unless it is a registered broker-dealer under ORS 59.015(a). However, a third party platform may:

(A) Allow an investor to transmit investor funds to an unaffiliated third party that is licensed or authorized to transmit money;

(B) Allow an investor to transmit funds to the issuer; or

(C) Direct an unaffiliated third party to transmit investor funds to the issuer pursuant to an written agreement;

(D) Collect certification and documentary evidence regarding an interested party's residency required by OAR 441-035-0090 provided the third party platform provider complies with the records requirement in 441-035-0220.

(b) On portions of the platform accessible to the general public, a third party platform only makes viewable the general business and contact information of the issuer;

(c) The platform does not offer investment advice, endorse, or solicit for any issuer on the platform;

(d) The platform does not engage in secondary trading of an issuer's securities; and

(e) A platform only charges a nominal flat fee for the upkeep of the website and may not obtain any interest in the issuer in return for posting information on the platform.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0170
Prohibited Offerings

The OIO exemption is unavailable for the following types of offerings:

(1) Offerings involving development stage companies without a specific business plan or purpose, or in which the issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds for sufficiently identifiable properties or objectives (e.g., "blank check" offerings);

(2) Offerings that involve the sale of securities other than notes, stocks, or debentures.

(3) Offerings involving petroleum exploration or production, mining, or any other extractive industries; or

(4) Offerings involving an investment company as defined and classified under Section 4 of the Investment Company Act of 1940.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0180
Prohibition on Commissions, Fees and Other Remuneration

No person may receive a commission, fee, or other remuneration for offering, soliciting or selling any OIO security.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0190
Integration

(1) All separate sales of securities will be included as part of the OIO if, after considering the following elements, there are compelling reasons to treat the sale as part of the same offering. The elements to be considered are:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involved issuance of the same type of security;

(c) Whether the sales are made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

(2) Employee benefit plans. Offers and sales of any securities registered under OAR 441-065-0270 are not included for purposes of this rule.

(3) Sales of securities made more than six months prior to the offer or sale of securities in reliance on this exemption, or more than six months after the termination offer or sale of securities in reliance on this exemption will not be counted or included as sales made as part of the same offering under this rule if there are no sales of securities of the same or similar type by the issuer during either six month period other than sales of securities under an employee benefit plan registered under OAR 441-065-0270.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0200
Reporting

(1) An issuer of an OIO security shall provide a report to all individuals having an outstanding security interest obtained through this exemption at least twice a year. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a Website if the information is made available within 45 days of the end of each fiscal half-year and remains available for at least 60 days. An issuer must provide a written copy of the report to any shareholder as requested. The report required by this section shall be provided free of charge regardless of format. A copy of the report shall be filed with the Director at the same time it is provided to the issuer's investors. The report must contain the following:

(a) Compensation received by each Director and executive officer, or person occupying a substantially similar role, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(b) An explanation and discussion of the business operations and financial condition of the issuer such as a recent financial statement and profit and loss statement.

(c) The Director may require any issuer to file periodic reports to keep the information contained in the notice reasonably current and to disclose the progress of the offering.

(2)(a) The issuer must file a sales report with the Director no later than thirty (30) calendar days after the expiration of the offering in a form prescribed by the Director.

(b) A sales report must state the total amount raised through the offering, how many investors purchased securities through the offering, and whether, if funds were held in escrow the funds were released to the issuer.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0210
Bad Actors

(1) The OIO exemption is not available if, within five years prior to the offering, any of the following apply:

(a) An issuer or person affiliated with the issuer has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order thereunder.

(b) An issuer or person affiliated with the issuer is subject to any pending proceeding under SEC rule 258 promulgated under the Securities Act of 1933, or any similar section adopted under section 3(b) of the Securities Act of 1933, or to an order entered thereunder.

(c) An issuer or person affiliated with the issuer has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of any security, or involving the making of any false filing related to the offer or sale of any security, or any felony or misdemeanor involving dishonesty.

(d) An issuer or a person affiliated with the issuer is, or has been, subject to a state administrative order or judgment containing findings that the issuer or person affiliated with the issuer engaged in fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, in connection with the purchase or sale of securities.

(e) An issuer or person affiliated with the issuer has ever been subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority (including non-U.S. regulatory authorities) preliminarily, temporarily, or permanently restraining or enjoining such person from

engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security.

(f) An issuer or a person affiliated with the issuer is the subject of a cease and desist order entered after notice and opportunity for hearing by the Director, a securities agency or administrator of another state or Canadian province or territory, the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission that contains allegations of securities fraud or misrepresentations in connection with investment offerings.

(2) The disqualification under this rule may not apply if:

(a) The Director determines that it is not necessary under the circumstances that an exemption be unavailable; and

(b) The issuer establishes that they did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this rule.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0220
Records

The issuer shall maintain the following records for inspection by the Director for four (4) years from the date the OIO is concluded.

(1) Records relating to purchasers and materials and data relied upon to determine the qualifications of the purchasers;

(2) Records relating to securities sales following the close of the offering that are considered as part of the offering; and

(3) All disclosure, advertising, and purchaser acknowledgement materials used in connection with offerings.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

441-035-0230
Burden of Proof

Under ORS 59.275, persons relying upon the OIO rules have the burden in any civil, criminal or administrative action brought under or in connection with Oregon Securities Law of proving that they satisfied all of the conditions of this exemption.

Stat. Auth.: ORS 59.035
Stats. Implemented: ORS 59.035
Hist.: FCS 1-2015, f. & cert. ef. 1-15-15

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Adoption of New Annuity Mortality Table for Determining Reserve Liabilities for Annuities
Adm. Order No.: ID 20-2014
Filed with Sec. of State: 12-16-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Adopted: 836-051-0235
Rules Amended: 836-051-0210, 836-051-0220, 836-051-0230
Subject: These permanent rules recognize a new annuity mortality table (2012 IAR Table) for use in determining reserve liabilities for annuities. The National Association of Insurance Commissioners (NAIC) adopted the revisions to NAIC Model Rule (Regulation) #821 in December 2012. Adoption of this table will require insurers to use the new table as the reserve mortality standard for individual annuity or pure endowment contracts issued after January 1, 2015. The 2012 IAR Table is a generational mortality table developed by the Society of Actuaries that incorporates projections for future mortality improvements. For affected contracts, reserves will ore accurately reflect anticipated mortality improvements for years beyond contract issue. Generally, the new table will result in higher reserves than current requirements.

This rule will take effect January 1, 2015.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-051-0210
Purpose

The purpose of OAR 836-051-0200 to 836-051-0250 is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts:

(1) The 1983 Table "a".

(2) The 1983 Group Annuity Mortality (1983 GAM) Table.

(3) The Annuity 2000 Mortality Table.

(4) The 2012 Individual Annuity Reserving (2012 IAR) Table.

(5) The 1994 Group Annuity Reserving (1994 GAR) Table.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 733.306 & 743.215
Stats. Implemented: ORS 733.306
Hist.: ID 15-1997, f. & cert. ef. 10-29-97; ID 20-2014, f. 12-16-14, cert. ef. 1-1-15

836-051-0220
Definitions

For the purpose of OAR 836-051-0200 to 836-051-0250, the following terms have the following meanings:

(1) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners. (See 1982 Proceedings of the NAIC II, page 454.)

(2) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners. (See 1984 Proceedings of the NAIC I, pages 414 to 415.)

(3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(4) "2012 IAR Table" means that Generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx 2012+n, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in Section 5.

(5) "2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table" means the Period table containing loaded mortality rates for calendar year 2012. This table contains rates, qx 2012, developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices 1-2.

(6) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(7) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a Period table and a projection scale containing rates of mortality improvement.

(8) "Period table" means a table of mortality rates applicable to a given calendar year (the Period).

(9) "Projection Scale G2 (Scale G2)" is a table of annual rates, G2x, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices 3-4.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 733.306 & 743.215
Stats. Implemented: ORS 733.306
Hist.: ID 15-1997, f. & cert. ef. 10-29-97; ID 20-2014, f. 12-16-14, cert. ef. 1-1-15

836-051-0230
Individual Annuity or Pure Endowment Contracts

(1) Except as provided in sections (2) and (3) of this rule, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the insurer, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after October 4, 1977.

(2) Except as provided in section (3) of this rule, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1998.

(3) Except as provided in section (4) of this rule, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of val-

uation for any individual annuity or pure endowment contract issued on or after January 1, 1999.

(4) Except as provided in section (5) of this rule, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(5) The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1998, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(a) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(b) Settlements involving similar actions such as workers' compensation claims; or

(c) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 733.306 & 743.215
Stats. Implemented: ORS 733.306
Hist.: ID 15-1997, f. & cert. ef. 10-29-97; ID 20-2014, f. 12-16-14, cert. ef. 1-1-15

836-051-0235
Application of the 2012 IAR Mortality Table

(1) In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year (2012 + n) is calculated as follows: q*x **2012+n** = qx**2012** (1 – G2x)**n**. The resulting qx 2012+n shall be rounded to three decimal places per 1,000, e.g., 0.741 deaths per 1,000. Also, the rounding shall occur according to the formula above, starting at the 2012 period table rate.

(2) For example, for a male age 30, qx 2012= 0.741. qx 2013= 0.741 * (1 – 0.010) ^ 1 = 0.73359, which is rounded to 0.734. qx 2014= 0.741 * (1 – 0.010) ^ 2 = 0.7262541, which is rounded to 0.726.

(3) A method leading to incorrect rounding would be to calculate qx 2014 as qx 2013 * (1 – 0.010), or 0.734 * 0.99 = 0.727.

(4) It is incorrect to use the already rounded qx 2013 to calculate qx 2014.

Stat. Auth.: ORS 731.244, ORS 733.306 & 743.215
Stats. Implemented: ORS 733.306
Hist.: ID 20-2014, f. 12-16-14, cert. ef. 1-1-15

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Department of Consumer and Business Services, Oregon Occupational Safety and Health Division
Chapter 437

Rule Caption: Adopt federal OSHA correction to Vehicle-Mounted Elevating and Rotating Work Platforms in General Industry.
Adm. Order No.: OSHA 1-2015
Filed with Sec. of State: 1-5-2015
Certified to be Effective: 1-5-15
Notice Publication Date: 12-1-2014
Rules Amended: 437-002-0060
Subject: This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

Federal OSHA published, in the July 1, 2014 Federal Register, a notice of a typographical error to 1910.67 (Vehicle-mounted Elevated and Rotating Work Platforms).

Currently under 1910.67(c)(5) Welding standard, the rule references the "Automotive" Welding Society; however, the correct title to the national consensus standard organization referenced is "American" Welding Society. This rulemaking corrects the typographical error.

Oregon OSHA makes this correction to 1910.67(c)(5), in Division 2/F.

Please visit our website: www.orosha.org Click 'Rules' in the left vertical column and view our proposed, adopted, and final rules.
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0060
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.66 Powered Platforms for Building Maintenance, published 2/14/07, FR vol. 72, no. 30, p. 7136.

(2) 29 CFR 1910.67 Vehicle-Mounted Elevating and Rotating Work Platforms, published 7/1/14, FR vol. 79, no. 126, p. 37189.

(3) 29 CFR 1910.68 Manlifts, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) These standards are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 1-2015, f. & cert. ef. 1-5-15

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Department of Corrections
Chapter 291

Rule Caption: Periodic Reviews for Inmates Assigned to the Intensive Management Unit
Adm. Order No.: DOC 24-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 12-29-14
Notice Publication Date:
Rules Amended: 291-055-0005, 291-055-0010, 291-055-0014, 291-055-0019, 291-055-0020, 291-055-0025, 291-055-0031, 291-055-0040, 291-055-0045, 291-055-0050
Rules Repealed: 291-055-0010(T), 291-055-0014(T), 291-055-0019(T), 291-055-0020(T), 291-055-0025(T), 291-055-0031(T), 291-055-0040(T), 291-055-0045(T), 291-055-0050(T)
Subject: These rule amendments are necessary to modify the department's process for conducting meaningful periodic reviews of inmates assigned to the Intensive Management Unit (IMU) or an IMU status cell. Other changes are necessary to reflect operational and organizational changes within the department.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-055-0005
Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to:

(a) Establish Department of Corrections policy and procedures for the assignment of custody Level 5 inmates to special security housing and programs in a designated Intensive Management Unit (IMU) or IMU status cells separate from general population housing in Department of Corrections facilities to provide the maximum level of inmate security, control, and supervision; and

(b) Establish standards for the operation and management of IMU and IMU status cells.

(3) Policy: It is the policy of the Department of Corrections to:

(a) Assign custody Level 5 inmates, or inmates who are under investigation for or who have been charged with the in-custody murder or assault of another inmate or staff, to special security housing and programs in a designated IMU or IMU status cells separate from general population housing in Department of Corrections facilities to provide the maximum level of inmate security, control, and supervision as provided in these rules.

(b) Conduct meaningful periodic reviews of an inmate's status and continued assignment to an IMU or IMU status cell as provided in these rules.

(c) Temporarily reassign inmates assigned to an IMU or IMU status cell to other treatment, program or service units (i.e., infirmary, Administrative Housing, Disciplinary Segregation, mental health special housing) for treatment or programming as deemed necessary or advisable by the department.

(d) Ensure inmates assigned to an IMU or IMU status cells have an opportunity for administrative review of their custody Level 5 classification and assignment to IMU as provided in the department's rule on Classification (Inmate), OAR 291-104.

Stat Auth: ORS 179.040, 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 7-2000(Temp), f. 2-24-00, cert. ef. 2-24-00 thru 8-22-00; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 10-2002(Temp), f. & cert, ef, 7-10-02 thru 1-6-03; DOC 14-2002, f. & cert. ef. 11-8-02; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0010
Definitions

(1) Intensive Management: The status of a custody Level 5 inmate assigned to special security housing and programs in a designated intensive management unit or cell separate from general population housing units and cells in Department of Corrections facilities.

(2) IMU Inmate Program Committee: An institution committee that reviews an inmate's movement among the program levels. The Assistant Superintendent of Correctional Rehabilitation will chair the committee. The committee will consist of staff from Correctional Rehabilitation, Behavioral Health Services, Security Threat Management, Religious Services, and security. Representatives from the Office of Population Management, Education section, Health Services, and Hearings may also attend.

(3) IMU Shift Supervisor: The person responsible for the daily operation of the IMU in the absence of the IMU manager.

(4) Intensive Management Unit (IMU) Manager: The officer-in-charge or designee responsible for the daily operation of the IMU.

(5) Officer-in-Charge: The person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(6) Serious Management Concerns: Participation either individually, or in a group, in behavior which poses a significant threat to the safe and secure operation of the facility, including, but not limited to;

(a) Threatening or inflicting bodily injury on another person;

(b) Posing an immediate risk of escape;

(c) Promoting or engaging in disruptive group behavior;

(d) Promoting security threat group activities; or

(e) Being involved in any other activity that could significantly threaten the safe and secure operation of the facility, and that such behavior poses a sufficient threat that, in the judgment of the department, can only be adequately controlled in appropriate special housing.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-911; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94 ; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 7-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08; Administrative correction 10-21-08; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0014
Selection of Intensive Management Unit Staff

(1) Selection Criteria:

(a) To qualify for a post that is solely assigned to an Intensive Management Unit, the employee:

(A) Must have successfully completed trial service;

(B) Must have achieved a satisfactory on a special performance appraisal at the time of application and assignment to IMU. At a minimum, the staff member must meet the following criteria:

(i) Have demonstrated maturity and tolerance;

(ii) Have expressed a constructive interest in working with inmates in IMU;

(iii) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(iv) Have demonstrated the ability to use good judgment.

(2) Assignments to Intensive Management Unit posts:

(a) Assignment to Intensive Management Unit posts will be made by the functional unit manager or designee and will be reviewed at least annually.

(b) Rotation of staff assigned to Intensive Management Unit posts may occur as it is found to be in the best interest of the employee or the facility, upon determination by the functional unit manager.

(c) Temporary assignment to Intensive Management Unit posts will be made by the functional unit manager or designee. Temporary assignments shall be given only to employees who meet the initial qualifications specified in this rule. Whenever possible, temporary assignments will be given only to employees who have successfully completed training specified by the Department of Corrections.

(3) Any exceptions to this rule for staff selection to an Intensive Management Unit post must be approved by the Assistant Director for Operations or designee prior to assignment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0019
IMU Assignments

(1) Custody Level 5 inmates who have received a sentence other than a sentence of death, or who are pending retrial in a case in which a death sentence may be re-imposed, shall be assigned to an IMU or IMU status cell. Inmates who have received a sentence of death (inmates on death row status), or who are under investigation for or who have been charged with the in-custody murder of another inmate or staff, may be assigned housing in an IMU or IMU status cell.

(a) An inmate demonstrates the need for custody Level 5 housing by demonstrating behaviors that in the judgment of the department cause serious management concerns.

(b) Inmates assigned to an IMU or IMU status cell may be temporarily assigned to other housing, treatment, program or service units (i.e., infirmary, Administrative Housing, Disciplinary Segregation, mental health special housing, Death Row) for housing, treatment or programming as deemed necessary or advisable by the department.

(2) Assignment Request: A request for assignment to an IMU shall be initiated if an inmate scores custody Level 5, or when an override request to custody Level 5 is made.

(a) A Classification Summary, Intensive Management Unit Administrative Action Sheet (CD8a) and all pertinent information that demonstrates the need for IMU assignment shall be sent to the Office of Population Management.

(b) Staff shall indicate the reason for referral and a short statement describing the reason for requesting an IMU assignment. The Office of Population Management will approve or deny the request.

(3) Documentation of Decisions: All decisions by the Office of Population Management Administrator or designee will be documented on the Intensive Management Unit Administrative Action Sheet (CD 8a) and returned to the facility initiating the request. The signed copy of the action sheet shall be filed in the inmate's IMU file at the Office of Population Management.

(4) Notice: Decisions by the Office of Population Management Administrator or designee that assign an inmate to IMU status will be sent to the inmate along with a Classification Summary (CD1120D), Intensive Management Unit Administrative Action Sheet (CD8a), Request for Administrative Review (CD1120aD), and a description of the inmate's review options.

(5) If an inmate is released from prison on IMU status and returns to the department with a new crime of conviction, and is reassigned to IMU housing or an IMU status cell, the inmate shall be re-instated at the same IMU program level last recorded upon release from prison.

(a) The inmate must be re-assigned to IMU housing or an IMU status cell in the same process as described in subsections (2) through (4) above.

(b) Any acts of misconduct upon return to prison will be reviewed by the IMU Inmate Program Committee upon assignment to an IMU or an IMU status cell for possible demotion.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 7-2000(Temp), f. 2-24-00, cert. ef. 2-24-00 thru 8-22-00; DOC 20-2000, f. & cert. ef. 8-18-00, Renumbered from 291-055-0011; DOC 10-2002(Temp), f. & cert, ef, 7-10-02 thru 1-6-03; DOC 14-2002, f. & cert. ef. 11-8-02; DOC 9-2013(Temp), f. & cert. ef. 10-23-13 thru 4-21-14; DOC 10-2014, f. & cert. ef. 4-22-14; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0020
Programming Levels of Intensive Management Unit Inmates

(1) Program Level Criteria:

(a) The Assistant Superintendent of Correctional Rehabilitation or designee will establish criteria for the various program levels.

(b) All inmates assigned to an Intensive Management Unit or IMU status cell will begin on program level two. The IMU Inmate Program Committee will evaluate each inmate's legal or investigative status, conduct, program involvement and behavior periodically.

(c) The initial review will be conducted 150 days after assignment to an IMU or IMU status cell and then at least every 90 days thereafter while on IMU status to determine further and appropriate program level assignment.

(d) Demotions:

(A) An inmate may be demoted one or more program levels for conduct or behavior which threatens the safe, secure and orderly operation of the Intensive Management Unit or failure to participate in programs. An inmate will not be demoted to a program level one strictly for failure to participate in a program. Any demotion to level one shall be based on inmate behavior.

(B) If immediate action is necessary, the IMU shift supervisor may take appropriate action and recommend a reduction in an inmate's program level and submit it to the Intensive Management Unit manager for approval. All demotions will be reviewed by the IMU Inmate Program Committee for final approval.

(e) Inmate Program Committee Guidelines for Level Advancement: The following criteria will be considered when evaluating an inmate's adjustment in IMU for program level advancement:

(A) Level One: One month at level one with no major rule violation and no more than one minor rule violation may earn promotion to:

(B) Level Two: Two months at level two with no major rule violation and no more than one minor rule violation and active participation in prescribed programming may earn promotion to:

(C) Level Three: Three months at level three with no major rule violation and no more than one minor rule violation and a successful completion of prescribed programs may earn promotion to:

(D) Level Four: Maintain level four with no major rule violation and no more than one minor rule violation.

(2) Program Level Services and Activities: Services, activities, programs, incentives, and property may vary based on the architecture of the facility and individual needs of each assigned inmate. An inmate's adjustment and behavior while housed in the Intensive Management Unit will determine the inmate's service and activities program level. The schedule for programs and services are as follows:

(a) Level One basic services provided to Intensive Management Unit (IMU) inmates:

(A) Correspondence and photos (excluding publications): As received through the mail after assignment to level one.

(B) Commissary: Envelopes ordered every two weeks.

(C) Pen and paper.

(D) Legal services: As required in accordance with the department's rule on Legal Affairs (Inmate), OAR 291-139. Inmates are authorized to possess legal materials for active and pending cases in accordance with OAR 291-117-0100, Authorized Legal Property.

(E) Religious services and materials: As requested and meeting security requirements.

(F) Personal hygiene/shower: Three times per week.

(G) State issued personal care items (soap, tooth powder, toothbrush, comb, toilet paper).

(H) Bedding: One mattress, one pillow, one pillow case, two sheets, one towel, and blanket(s) as needed.

(I) Clothing: One set of undergarments, coverall and footwear.

(J) Address books.

(K) Treatment/Programming/Educational Services: As deemed appropriate to the individual treatment program and meeting security requirements.

(L) Library: Up to three paperback books on a scheduled exchange basis.

(b) Level Two services and activities available to IMU inmates: In addition to level one basic services:

(A) Recreation: 40 minutes per day, five days per week.

(B) Commissary: $25 worth of commissary items ordered every two weeks.

(C) One approved property storage container.

(D) Personal care items on the IMU commissary list from the inmate's personal property or purchased after placement.

(E) One pair of personal shower shoes.

(F) Educational material, treatment or psychological service program materials: As requested, approved and meeting security requirements.

(c) Level Three services and activities available to IMU inmates: In addition to level two services:

(A) Commissary: $30 of commissary items ordered every two weeks.

(B) Radio and headphones.

(C) One pair of personal shoes.

(D) Personal books, stored appropriately.

(E) Personal property on the IMU commissary list.

(F) One photo album.

(G) Telephone access one time per week up to 40 minutes.

(H) Work assignments.

(d) Level Four services and activities available to IMU inmates: In addition to level three services:

(A) Commissary: $40 worth of commissary items ordered every two weeks.

(B) Personal property: No more than two approved storage containers.

(e) Level Five services and activities available to IMU inmates in addition to level four services:

(A) Commissary: $50 worth of commissary items ordered every two weeks.

(B) Telephone access up to one hour per day.

(C) Televisions purchased through commissary or issued from the inmate's personal property.

(D) Personal electronic players as approved.

(3) Immediately following any action of self destruction, a medical or psychological services staff member will be consulted by the IMU Manager to determine if the inmate should be recommended for transfer to mental health special housing.

(4) IMU status inmates will be permitted to leave their cell as appropriate to their program level for visits, exercise, showers, medical, dental, or mental health services, hearings, interviews, or other reasons as authorized by the IMU Manager.

(a) The Assistant Superintendent of Security will assign escort supervision as deemed appropriate.

(b) IMU inmates will not be permitted to leave their cells without approval from the IMU Manager unless previously scheduled to do so for program participation. The inmate will be in restraints at all times while being escorted inside and outside the unit. Routine staff interviews may be accomplished at the inmate's cell.

(5) The IMU Manager or designee will conduct a tour of the Intensive Management Unit at least once per shift. Inmates may address questions to the IMU Manager at this time.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0025
Situational Reviews

Individual inmate assessments may be requested by the Assistant Superintendent of Correctional Rehabilitation or designee or the IMU Inmate Program Committee at any time. Inmates requesting mental health services may be referred to qualified Behavioral Health Services personnel pursuant to recommendation of Behavioral Health Services program staff or the Assistant Superintendent of Correctional Rehabilitation or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0031
Retention/Re-assignment from an IMU or IMU Status Cell

(1) When considering an inmate for re-assignment from an IMU or IMU status cell to other appropriate housing, the IMU Inmate Program Committee will consider the inmate's adjustment within IMU, the nature and severity of the high category misconduct, length of time in IMU, and past history. The committee may also consider the degree of participation in self-improvement programs, mental health counseling, anger management, education, job assignments, alcohol/drug abuse therapy, assessment and evaluation, behavioral contracts, security threat group disassociation, communicable disease counseling, or other institutional management concerns.

(2) Periodic Review:

(a) The IMU Inmate Program Committee shall review each inmate assigned to an IMU or IMU status cell periodically. The initial review will be conducted at 150 days after the initial placement on IMU status or an IMU status cell, and then at least every 90 days, or within 30 days of the inmate obtaining program level four status, to determine if the inmate will be retained in or re-assigned from an IMU or IMU status cell to other appropriate housing.

(b) Prior to the review and recommendation by the IMU Inmate Program Committee, the IMU status inmate will receive notice and be allowed an opportunity to provide written submission to the committee for their consideration.

(c) The IMU Inmate Program Committee shall submit a written recommendation to either retain or reassign an inmate from IMU or an IMU status cell to the Office of Population Management Administrator or designee. A completed IMU 90 Day Review (CD1683) must be sent to the Office of Population Management describing the reason(s) and justification for the inmate to be either retained in or re-assigned from IMU or an IMU status cell.

(d) The Office of Population Management Administrator or designee shall make a decision to retain the inmate in IMU or an IMU status cell or assign the inmate to other appropriate housing. The Office of Population Management Administrator's or designee's decision is final and not subject to further review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-144; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0040
Property

(1) Any personal property, as defined in the Department of Corrections rule on Personal Property Control and Disposition (Inmate), OAR 291-117, not permitted in the cell of any Intensive Management Unit inmate will be properly protected in a designated property room. Upon release from IMU, the inmate shall check his/her personal property and sign the property sheet.

(2) Intensive Management Unit inmates will be permitted to retain basic personal health items (dentures, prescribed eye wear, hearing aids and approved prosthetic devices).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0045
Services, Programs and Activities

(1) Basic: The following basic programs and services will be provided to all inmates in IMU unless compelling security or safety reasons dictate otherwise.

(a) Food:

(A) Except when under special diet specifically prescribed by the medical officer, each IMU inmate shall receive food prepared in accordance with the Department of Corrections rule on Food Service Programs, OAR 291-061.

(B) Food will be delivered to each inmate in his/her cell by a staff member.

(C) Food shall never be used as punishment.

(D) Intensive Management Unit inmates who intentionally misuse food or eating utensils may be subject to the provisions of the department's rule governing Controlled Feeding, OAR 291-083.

(b) Clothing: A clean set of undergarments and coveralls will be provided on an exchange basis three times a week.

(c) Bedding: Clean sheets and one pillow case will be exchanged on a weekly basis. A clean towel will be provided on an exchange basis at least three times per week.

(d) Personal Hygiene/Shower: Inmates will be allowed to shower, shave and obtain necessary personal care items three times a week. Arrangements for haircuts will be arranged on a regularly scheduled basis.

(e) IMU inmates shall be provided correspondence privileges in accordance with the Department of Corrections rule on Mail (Inmate), OAR 291-131. Inmates may submit Interview Requests and grievances. Grievances will be handled in a manner prescribed by the Department of Corrections rule on Grievance Review System (Inmate), OAR 291-109.

(f) Legal Services: IMU inmates may pursue their legal activities in accordance with the Department of Corrections rule on Legal Affairs (Inmate), OAR 291-139. Legal material will be provided. Abuse of materials may result in disciplinary action. Attorney visits must be scheduled in advance.

(g) Religious: IMU inmates will be allowed to receive religious guidance if requested. Religious Services staff will visit each Intensive Management Unit once per week. Request for religious material will be reviewed by the Assistant Superintendent of Security or his/her designee prior to issuing to the inmate.

(i) Medical/Dental/Mental Health Services:

(A) Health care and mental health care services will be provided to inmates in IMU in accordance with the Department of Corrections rule on Health Services (Inmate), OAR 291-124.

(B) A member of the Health Services staff shall minimally visit IMU inmates three times weekly. The staff member will provide each inmate an opportunity to talk with him/her and refer requests for medical, dental, or mental health services to the appropriate staff member.

(C) A physician will visit Intensive Management Units as the need arises. Dental services will be provided on a schedule determined between the unit manager or his/her designee and the Health Services Manager.

(D) Mental Health Services:

(i) Behavioral Health Services staff shall perform and supervise mental health services as needed. Services may include crisis intervention, behavioral contracts, anger management, brokering out other mental health services, as well as transitional services.

(ii) While it is recognized some inmates refuse services and are otherwise unamenable to treatment, the accessibility to treatment services remains available during times of assessment, by inmate request, or could be fostered by an inmate's uncontrollable behavior(s).

(2) Services: Depending on unit adjustment and inmate programming level, inmates have opportunities for increased programs and services. These programs and services may include the following:

(a) Visits: Visits will be conducted in accordance with the department's rule on Visiting (Inmate), OAR 291-127. Visits will be conducted in a basic visiting area for IMU status inmates. Visits must be scheduled at least three days in advance of the visit. Two one-hour sessions will be made available monthly. Additional visiting sessions may be made available based on facility architecture and approved by the IMU Manager.

(b) Exercise: Inmates on IMU status shall have the opportunity to exercise out of their cells as outlined by the IMU program level, except for those inmates who receive a conduct order or disciplinary sanction as provided in the department's rule on Prohibited Inmate Conduct (OAR 291-105). Inmates eligible to exercise will receive 40 minutes of exercise per day, five days per week. The 40-minute exercise period will begin when the inmate exits his/her cell.

(c) Library: Paperback books are available for inmate use on an exchange basis. The books may be exchanged on a regularly scheduled basis.

(d) Commissary: As outlined in OAR 291-055-0020, inmates may be eligible to purchase commissary items based upon their IMU program level. Commissary items will be issued every other week to eligible inmates. Authorized commissary items on the approved IMU Commissary List may be purchased.

(e) Education: Education services may be made available to inmates assigned to IMU or to an IMU status cell to assist in developing each inmate's academic needs.

(f) Correctional Counselor Services: A correctional counselor will be assigned to each IMU.

(g) The services listed in sections (a) through (f) above will be provided unless security, staff availability, safety or sanitation considerations dictate otherwise as authorized by the functional unit manager or designee.

(h) Additional incentives may be offered to inmates assigned to double bunk cells.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

291-055-0050
Forfeiture/Deprivation of Service or Activity

(1) An Intensive Management Unit inmate may be required to forfeit or be temporarily deprived of any service or activity when the inmate is using them to destroy or damage property, obstruct security, or threatens physical violence to self or others. If an inmate is using any service or activity for self destruction, that service/activity may be temporarily removed upon order of the IMU manager or designee. Any item(s) withheld shall be returned at the earliest possible time when the basis for removal has ceased to exist. A written report documenting the action will be forwarded to the functional unit manager or designee.

(2) Services and activities may be forfeited or deprived as a result of a disciplinary sanction in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions, OAR 291-105.

(3) Additional programs and services will depend on the inmate's adjustment and adherence to department rules and Intensive Management Unit regulations. Programs and services outlined in this rule denote eligibility only, they do not guarantee program and service delivery. Staff and facility resources may determine frequency and duration of approved inmate activity.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; DOC 24-2014, f. & cert. ef. 12-29-14

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Rule Caption: Utilization of the Inmate Telephone System within DOC Facilities
Adm. Order No.: DOC 25-2014(Temp)
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Adopted: 291-130-0019
Rules Amended: 291-130-0005, 291-130-0006, 291-130-0011, 291-130-0016, 291-130-0020
Subject: The department has expanded its inmate telephone system to include video interactive phone (VIP) calls. These temporary rules are necessary to establish policies and procedures governing of the use of VIP calls and to provide clarification for the appropriate use of VIP calls. Other changes are necessary to reflect organizational and operational changes that have occurred within the department.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-130-0005
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish policy and procedures governing the use of the inmate telephone system.

(3) Policy: The department encourages productive relationships between inmates and their families and recognizes telephone services are a positive means to strengthen ties and increase the likelihood of success upon release.

(a) It is the policy of the Department of Corrections to allow inmates to make telephone calls in accordance with the procedures outlined in this rule.

(b) It is the policy of the Department of Corrections that video interactive phone calls are a part of the inmate telephone system, and such calls are governed by the same policy and procedures as telephone calls.

(c) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections to permit, promote, facilitate, and encourage authorized use of telephone systems between inmates and their families, friends, and others in Department of Corrections facilities.

(d) When authorized, use of the inmate telephone system in a Department of Corrections facility is permitted neither as a matter of right nor as a privilege of the inmate or the inmate's contact party; rather, use of the telephone system in Department of Corrections facilities is permitted by the department when it furthers the inmate's correctional planning and the department's correctional goals and mission and is consistent with the safe, secure and orderly management and operation of the facility.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14; DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

291-130-0006
Definitions

(1) Access to Inmate Telephone System: An inmate's use of a personal identification number (PIN) and validated voice recognition to connect to the inmate telephone system.

(2) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations. In these rules, the "functional unit manager" is the superintendent of an institution or the Inspector General.

(3) Inmate Telephone System: The system authorized by the Department of Corrections to facilitate inmate telephone calls and video interactive phone (VIP) calls.

(4) Legal Telephone Calls: Telephone calls between an inmate and his/her attorney or the attorney's documented representative(s), legal aid bureaus or other organizations as deemed appropriate by the department.

(5) Media Representatives:

(a) Persons whose principal employment is with an accredited media organization;

(b) Unaffiliated persons who produce credentials or other written documentation from an accredited media organization evidencing that the media organization has contracted with the person to purchase his/her completed work or project;

(c) Unaffiliated persons who are affiliated with a department contractor or volunteer in connection with a department program or service; or

(d) Authors of books who produce credentials or other written documentation that a commercial publisher has contracted to purchase their completed work/project.

(6) Officer in Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule or procedure during periods when the functional unit manager or officer of the day are not readily available.

(7) Personal Identification Number (PIN): An assigned number used by an inmate to access the inmate telephone system.

(8) Prepaid Call: A telephone call placed by an inmate using funds paid in advance from a telephone account.

(9) Telephone Services: Telephone calls, VIP calls, and voice messages afforded to inmates through the inmate telephone system.

(10) Third Party VIP Call: Any VIP call wherein the original called party logs out of the established session and provides another party with a different IP address sufficient information to log into the established VIP call. This includes any communication between the inmate and a third party utilizing the IP address.

(11) Three-Way Call: Any call that uses an intermediary call to bridge communication to a third party. This includes any communication between the inmate or the original called party with a third party not in the same location.

(12) Unaffiliated persons: Freelance writers, independent filmmakers, producers, and other persons who do not meet the definition of media representatives.

(13) Video Interactive Phone (VIP) Call: A call that has video interactive capabilities in which the parties are able to see and hear one another.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 8-1993, f. 3-10-93, cert. ef. 4-1-93; DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14; DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

291-130-0011
Operation of Inmate Telephones

(1) Inmates are required to provide their personal identification number (PIN) and validated voice recognition to gain access to the inmate telephone system.

(a) Inmates are responsible to maintain the security of their access information.

(b) An inmate may not use another inmate's access information.

(c) The department is not responsible for theft, loss or costs related to an inmate lending his/her access information or failing to provide for its safekeeping.

(d) An inmate's PIN will be terminated if it has been lost, stolen, or if in the sole judgment of the functional unit manager/designee, the PIN has been used by the inmate or another person to engage in activity that violated department rule, state or federal law, or in other activity that poses a threat or is detrimental to the security, safety, health, good order or discipline within a Department of Corrections facility, inmate rehabilitation or that facilitates criminal activity.

(e) If an inmate's PIN is terminated, the department will issue the inmate a new PIN. The department may assess the inmate a PIN replacement fee.

(2) Prepaid Calls: The department will establish a telephone account for each inmate.

(a) Inmates may transfer funds from their trust account to their telephone account. Availability of funds in the inmate's trust account will be verified before any transfer of funds to the telephone account.

(b) An inmate shall address any issues regarding funds in his/her telephone account directly to the inmate telephone service provider.

(c) Prepaid calls will disconnect when funds in an inmate's telephone account have been depleted.

(d) Inmates may obtain their individual telephone account balance through the inmate telephone system.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14; DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

291-130-0016
General Provisions for Inmate Telephones

(1) All calls must be placed as collect or prepaid. Only collect or prepaid calls can be made from telephones designated for inmate use.

(2) The functional unit manager or designee has the authority to restrict telephone calls by an inmate if the safety of the public would be involved or the security of the facility or safety and welfare of any person would be jeopardized.

(3) Inmates shall not participate in three way calls or any form of call forwarding. An inmate may be assessed a service fee from the inmate telephone service provider if it is verified he/she has participated in a three-way call or any form of call forwarding.

(4) Inmates shall not place charges to third party numbers, motels, hotels, places of business, credit cards or to telephone company calling card numbers.

(5) If the telephone call cannot be completed because no one answers or the line is busy, the inmate shall hang up and attempt another call at another time.

(6) Inmates shall not loiter in the surrounding area where telephones are located.

(7) Only one inmate at a time shall be permitted access to a telephone. The inmate who initiates a call is the only person authorized to converse with the contact party during that call.

(8) Inmates may be required to sign up on the telephone log (CD 755) to reserve a time to use a telephone in a housing unit or activity area when there are a large number of inmates who want access to a telephone but there are a limited number of telephones.

(9) A set of Oregon telephone directories for major cities shall be located in the facility library.

(10) Special Housing: Inmates in special housing may be allowed telephone services as established by the functional unit manager. Special housing includes administrative housing, disciplinary segregation, Intensive Management Unit, Death Row housing, mental health special housing, and facility infirmaries.

(a) Inmates in special housing may have restricted telephone services, and be allowed only emergency calls, legal calls as specified in OAR 291-130-0021, or other calls as authorized by the functional unit manager or designee.

(b) Inmates in mental health special housing may have limited access to telephones if the access interferes with the inmate's treatment.

(11) The department may prohibit an inmate from calling a particular person or phone number when requested by the person, or in the case of a minor child, by the child's parent or legal guardian.

(12) Telephone calls between inmates and staff, volunteers, or contractors; or calls between inmates and former staff, volunteers, or contractors are not allowed without express written authorization by the functional unit manager or designee.

(13) Other inmate telephone services or restrictions, not specifically addressed in this rule, may be implemented for safety and security reasons or as authorized by the functional unit manager.

(14) Inmates shall report all inmate phone repair issues as directed by the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93, Renumbered from 291-130-0010(5); DOC 7-2002, f. & cert. ef 6-12-02; Renumbered from 291-130-0040, DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14; DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

291-130-0019
Operation and General Provisions of VIP Calls

(1) Inmates are required to provide their personal identification number (PIN) and comply with a validation process to gain access to the inmate telephone system to make VIP calls.

(2) The same provisions that apply to telephone calls as specified in OAR 291-130-0011 apply to VIP calls (security of PIN and access).

(3) Inmates are responsible to schedule VIP calls through the inmate telephone system via kiosks located throughout each institution.

(a) Accessibility to VIP calls will differ by institution given the uniqueness of each institution.

(b) Inmates will be allowed to make VIP calls during designated times based on a first-come, first-served basis to access their accounts with staff authorization.

(4) Inmates must place VIP calls as prepaid. The inmate telephone system does not allow collect VIP calls.

(5) The functional unit manager or designee has the authority to restrict or revoke VIP calls by an inmate if the safety of the public would be involved or the security of the facility or safety and welfare of any person would be jeopardized.

(6) If the inmate cannot complete the VIP call because the called party is not available or for other reasons, the inmate shall terminate the call and reschedule at another time.

(7) Inmates shall not loiter in the surrounding area where kiosks are located.

(8) Only one inmate at a time shall be permitted access to a VIP call. The inmate who initiates a VIP call is the only person authorized to converse with the contact party during that call. An inmate may be assessed a fee from the inmate telephone service provider if it is verified more than one inmate participated in a VIP call.

(9) Family VIP Calls: The functional unit manager or designee, at their sole discretion, may authorize more than one inmate to participate in a VIP call to encourage and promote responsible familial relationships.

(10) Appropriate Clothing/Dress:

(a) Inmates must be properly attired consistent with standards set forth in OAR 291-123-0015(5) and the inmate handbook.

(b) The caller or contacted party is encouraged to wear clothing that is conservative in nature; e.g., clothing that is not unduly suggestive or form fitting. The caller or contacted party shall not display male or female genitalia, the pubic area or anus, or expose the female breasts.

(11) VIP calls between inmates and staff, volunteers, or contractors; or between inmates and former staff, volunteers, or contractors are not allowed without express written authorization by the functional unit manager or designee.

(12) Special Housing: Inmates in special housing are not allowed access to VIP calls, unless authorization is given by the functional unit manager. Special housing includes administrative housing, disciplinary segregation, Intensive Management Unit, Death Row housing, mental health special housing, and facility infirmaries.

(13) The department may prohibit an inmate from participating in a VIP call with a particular person or phone number when requested by the person, or in the case of a minor child, by the child's parent or legal guardian.

(14) Inmates shall not participate in VIP calls with two or more parties using different IP addresses during the same VIP call. An inmate may be assessed a service fee from the inmate telephone service provider if it is verified he/she has participated in a VIP call with participants using more than one IP address.

(15) Inmates shall not use VIP calls for interviews with media representatives or unaffiliated persons. Media representatives or unaffiliated persons may request an interview with an inmate in accordance with the department's rules on Media Access (OAR 291-204).

(16) Inmates shall not use VIP calls as an outlet for public performances to individuals or organizations.

(17) Neither the inmate or contact party may record, re-broadcast, reproduce, duplicate, copy, sell, trade, or resell either the audio or video of the VIP call.

Stat Auth: ORS 179.040, 423.020, 423.030 & 423.075
Stat Impl: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

291-130-0020
Monitoring, Termination and Blocking of Telephone and VIP Calls

(1) All telephone calls and VIP calls are subject to monitoring and recording by the department except for legal telephone calls.

(a) Directly above each group of monitored telephones, a sign shall be posted stating in English and Spanish, "Phone calls are subject to being monitored and recorded."

(b) Directly above each VIP kiosk, a sign shall be posted stating in English and Spanish, "VIP calls are monitored and recorded."

(2) An inmate's use of the inmate telephone system to engage in activity that is a violation of department rules, state, or federal law may result in disciplinary action and possible restriction of telephone services.

(3) The department may block access to phone numbers used to commit a crime or violate department rules, including any attempt to place a three-way call or use any form of call forwarding. The owner of a telephone number that has been blocked for participation in a three-way call or call

forwarding may request an administrative review by writing to the Inspector General.

(4) An inmate's telephone services may be suspended by the functional unit manager/designee, in his/her sole discretion, when the functional unit manager/designee has reason to believe the inmate has used or may use inmate telephone services to:

(a) Engage in activity that violates department rule, state or federal law; or

(b) Engage in other activity that poses a threat or is detrimental to the security, safety, health, good order or discipline within a Department of Corrections facility, inmate rehabilitation, facilitates criminal activity, or jeopardizes the safety and welfare of any person.

(c) The guidelines for suspension of VIP services for inmates and callers are found in Exhibit A. The functional unit manager or designee may consider mitigating or aggravating factors in administering a less or more severe sanction than indicated in the grid, including the issuance of a misconduct report for inmates.

(d) If the activity is deemed to be a severe violation by the inmate of department rules, state, or federal law, disciplinary action will result; and the inmate will be held accountable in accordance with the provisions of the inmate disciplinary rules (OAR 291-105).

(5) A "high alert" inmate under the management of the Security Threat Management Unit may have his/her telephone services or individual telephone calls suspended, restricted, or modified in accordance with OAR 291-069-0270, Management of High Alert Inmates.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93, Renumbered from 291-130-0010(3); DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14; DOC 25-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Custody Classification Levels of Inmates in DOC Facilities
Adm. Order No.: DOC 1-2015(Temp)
Filed with Sec. of State: 1-6-2015
Certified to be Effective: 1-6-15 thru 7-3-15
Notice Publication Date:
Rules Amended: 291-104-0111, 291-104-0116, 291-104-0125, 291-104-0135, 291-104-0140
Subject: These rule modifications are necessary to update the policy and procedure of the classification system for assigning inmates with the appropriate custody level, which includes utilization of the violence predictor score; clarification of escape definitions within the custody classification guide; and clarification for classification level 5 inmates.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-104-0111
Definitions for OAR 291-104-0106 to 291-104-0140

(1) Administrative Review: A review of classification scoring, classification level, or classification override requested by an inmate and completed by the designated institution committee, facility functional unit manager, or Classification Manager.

(2) Arrest: For the purposes of these rules, arrest means placing a person under full custody (i.e. after being fully restrained or after being placed in a law enforcement vehicle for transport) for the purpose of charging that person with an offense.

(3) Classification Action: Initiation of initial classification, classification review or classification override to determine an inmate's custody classification level.

(4) Classification Manager: A Department of Corrections employee responsible for the development, implementation, training, auditing, oversight and management of the classification function within the department.

(5) Classification Review: The process used by the department to re-evaluate an inmate's assigned custody classification level. The assigned custody classification level may be changed as a result of the review.

(6) Corrections Information System (CIS): A computer system dedicated to tracking information critical to the management of inmates and offenders under the custody, supervision or both of the Department of Corrections.

(7) Custody: As it relates to escape, a person is in custody if a peace officer has placed the person under arrest for the purpose of charging that person with an offense.

(8) Custody Classification Guide (Attachment 1): Criteria and guidelines that assist in understanding an inmate's assigned custody classification level utilizing scoring elements determined by the Department of Corrections.

(9) Custody Classification Level: One of five levels of supervision assigned to an inmate through initial and classification review procedures.

(a) Level 5: An inmate assigned at this custody classification level meets one of the following criteria:

(A) Has demonstrated behaviors causing serious management concerns, or has demonstrated behaviors that in the judgment of the Department present a threat sufficient to require special security housing on intensive management status.

(B) Has a sentence of death or is pending retrial in a case in which a sentence of death may be re-imposed.

(C) Has a pending trial for a case in which a sentence of death may be imposed.

(D) Is under investigation for or has been charged with the in-custody murder of another inmate or staff.

(b) Level 4: An inmate assigned at this custody classification level presents a serious risk of escape or institutional violence, or has time remaining of 121 months to life, with or without parole.

(c) Level 3: An inmate assigned at this custody classification level presents a moderate risk of escape, has a Level 3 detainer, has demonstrated behavior causing moderate management concern, or has time remaining of 49 to 121 months.

(d) Level 2: An inmate assigned at this custody classification level presents a limited risk of escape, or has demonstrated behavior causing limited management concern, and has time remaining of less than 49 months.

(e) Level 1: An inmate assigned at this custody classification level presents a minimal risk of escape, meets the criteria for Detainer-Not Applicable, has demonstrated behavior causing minimal management concern and has time remaining of less than 49 months.

(10) Department of Corrections (DOC) Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(11) Designators: Information, alerts or statutory designations important for sentence computation and crucial to determining work crew eligibility, unfenced housing assignment, and the management of inmates and offenders both in institutions and in the community.

(12) Escape:

(a) For purposes of this rule, escape means an unlawful departure of a person from custody (as defined herein); or escape, attempted escape, or conspiracy to escape from any correctional facility, including state, federal, county or juvenile facilities; or departure and failure to return to any facility in which a person was court ordered to reside.

(b) Escape includes the unauthorized departure or absence from this state by a person who is under the jurisdiction of the Psychiatric Security Review Board, or under the jurisdiction of the Oregon Health Authority under ORS 161.315 to 161.351; abscond while on temporary release or transitional leave from a facility; or escape, attempted escape or conspiracy to escape from the custody of officials while in a legitimate criminal justice building for a court appearance.

(13) Initial Classification: The process used by the Department of Corrections to assign an inmate a custody level upon his/her admission to the physical custody of the Department.

(14) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(15) Office of Population Management: A functional unit of the department that overseas capacity and resource management, the inmate classification system, high risk inmate placement, Interstate Corrections Compact, treatment and program screening, Oregon Youth Authority/ghost caseloads, centralized Static 99R assessments, centralized transfer authority, and state and inmate conflict review.

(16) Override: An option utilized when there is a documented issue(s) not addressed in the classification scoring elements, or a degree of seriousness in a classification factor that justifies a higher or lower custody classification level than indicated by the classification action.

(17) Peace Officer: A civil officer appointed to preserve law and order, such as a sheriff, police officer, or parole officer.

(18) Policy Elements: Areas of potential risk that determine the inmate's custody classification level: escape history, sentence remaining, detainers, and institutional behavior.

(19) Serious Management Concerns:

(a) Participation, either individually or in a group, in behavior that in the judgment of the department poses a threat to the safe and secure operation of the facility, including but not limited to, threatening or inflicting serious bodily harm on another inmate or on staff, or that poses an immediate risk of escape;

(b) Promoting or engaging in group disruptive behavior, or being involved in the planning of any activities that in the judgment of the department would significantly threaten the safe and secure operation of the facility; or

(c) Demonstration of behavior that in the judgment of the department poses a threat sufficient to require special secure housing on intensive management unit.

(20) Special Population Management (SPM) Committee: A committee composed of at least three department administrative staff to include a representative from Institution Operations, Behavioral Health Services, and the Office of Population Management.

(21) Violence Predictor Score (VPS): A score based on a mathematical equation used to determine an inmate's potential risk for violence in an institutional setting during the first twelve months of incarceration. The equation includes calculations based on an inmate's age, gender, prior incarcerations, type of crime, aggression, drug history, and certain personality disorders.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 4-2006, f. 5-31-06, cert. ef. 6-1-06; DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08; DOC 11-2012(Temp), f. & cert. ef. 11-5-12 thru 5-4-13; DOC 4-2013, f. & cert. ef. 4-15-13; DOC 9-2013(Temp), f. & cert. ef. 10-23-13 thru 4-21-14; DOC 6-2014(Temp), f. 2-6-14, cert. ef. 2-12-14 thru 8-11-14; DOC 11-2014, f. & cert. ef. 5-1-14; DOC 1-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-104-0116
Initial Classification

(1)The Department of Corrections shall assign inmates an initial custody level in accordance with the Custody Classification Guide (Attachment 1) or the inmate's Violence Predictor Score, whichever is higher. An inmate will generally be assigned an initial custody classification level within 30 days of admission to the physical custody of the Department of Corrections.

(2) The Violence Predictor Score is used as a classification scoring element only during the first twelve months of an inmate's incarceration in the Department of Corrections, and may be applied at the discretion of a Department of Corrections counselor after a thorough review of an inmate's records.

(3) Upon admission to the physical custody of the Department of Corrections, the inmate's assigned counselor will determine an inmate's initial custody level and forward the classification action to the functional unit manager or designee for approval.

(4) No classification action is official until the functional unit manager or designee approves the classification action.

(5) Final approval for any override of one step will be made by Intake or institution staff and shall be documented on the classification override comment screen, describing the override reason.

(6) A custody classification override of more than a single step is not official until approved by the designated institution committee and the Classification Manager or designee.

(7) A custody classification of Level 5 is not official until approved by the designated institution committee, the SPM Committee and the High Risk Placement Manager or designee.

(8) An inmate may request a copy of his/her official classification action.

(9) All official classification actions are historically recorded and maintained in the CIS system.

(10) The Office of Population Management may modify any classification. In such cases, the affected facility will be notified of the reason(s) for the modification.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 4-2006, f. 5-31-06, cert. ef. 6-1-06; DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08; DOC 6-2014(Temp), f. 2-6-14, cert. ef. 2-12-14 thru 8-11-14; DOC 11-2014, f. & cert. ef. 5-1-14; DOC 1-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-104-0125
Classification Review

(1) An inmate's custody classification level will be reviewed when new information is received that affects a classification scoring policy element or when an inmate's Violence Predictor Score has expired.

(2) Custody Classification Levels 1–4: When new information is received that affects the inmate's custody classification level, the inmate's assigned counselor will review the classification action for accuracy and forward it to the functional unit manager for approval.

(a) No classification action is official until the functional unit manager or designee approves the classification action.

(b) Final approval for any override of one step will be made at the institutional level and shall be documented on the classification override comment screen describing the override reason.

(c) Overrides of more than a single step are not official until approved by the designated institution committee and the Classification Manager or designee.

(d) An inmate may request a copy of his/her official classification action.

(e) All official classification actions are historically recorded and maintained in the CIS.

(f) The Office of Population Management may modify any classification action. In such cases, the affected facility will be formally notified of the reason(s) for the modification.

(g) Counselors may opt to review inmates with ICE detainers for override to Level 2 for placement or retention in a minimum facility.

(3) Custody Classification Level 5:

(a) When an inmate's institutional behavior is determined to create serious management concerns, the classification action will be reviewed by the designated institution committee and forwarded to the Special Population Management (SPM) Committee for review. If the SPM committee approves an inmate's classification at Level 5, the Office of Population Management will officially assign a custody classification score of 5.

(b) Once an inmate is assigned to custody classification Level 5, the automated classification program will maintain the inmate's Level 5 custody classification status until such time as a lower custody classification is deemed appropriate and a new classification is generated. The new classification will be scored at custody classification Level 4 for one year.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 4-2006, f. 5-31-06, cert. ef. 6-1-06; DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08; DOC 6-2014(Temp), f. 2-6-14, cert. ef. 2-12-14 thru 8-11-14; DOC 11-2014, f. & cert. ef. 5-1-14; DOC 1-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-104-0135
Administrative Review

(1) An inmate may request an administrative review of his/her classification action by completing and submitting the Department of Corrections Request for Administrative Review form (CD1120aD) or Request for Administrative Review of IMU Level 5 Custody form (CD1120aE).

(2) Issues Subject to Administrative Review: Administrative review is available to an inmate to contest three aspects of his/her classification action: 1) the accuracy of custody classification levels 1–4 scoring, 2) an override of a scored custody classification level, or 3) a Level 5 custody classification.

(a) Custody Classification Level 1-4 Accuracy of Scoring:

(A) To obtain an administrative review of a Level 1-4 custody classification score, an inmate must complete the top portion of a CD1120aD form, and send the completed form, together with any supporting documentation, to the designated institution committee at the facility where the inmate is currently housed. The institution committee must receive the request within 30 calendar days of the classification approval date. The institution committee should complete its review within 30 days after receiving an inmate's review request.

(B) If, after receiving the review decision of the designated institution committee, an inmate is not satisfied with the decision, the inmate may obtain further review of the custody classification Level 1-4 score by sending another completed CD1120aD form, together with any supporting documentation, and a copy of the institution committee's decision, to the functional unit manager or designee of the institution where the inmate is currently housed. The functional unit manager or designee must receive the review request within 30 calendar days of the institution committee's review decision. The functional unit manager or designee should complete his/her review within 30 days after receiving the inmate's review request. There shall be no further administrative review of a custody classification Level 1-4 score.

(C) Inmates engaged in the intake process may not submit a request for review of their custody classification score until they are no longer housed at the Intake Center.

(b) Override of a Scored Custody Classification Level 1-4: To obtain an administrative review of classification that has been overridden at the institution level, an inmate must complete the bottom portion of a CD1120aD form and send the completed form to the Classification Manager, together with any supporting documentation. The Classification Manager must receive the review request within 30 calendar days of the classification action approval date. The Classification Manager should complete the review within 30 days after receiving an inmate's review request. There shall be no further administrative review of an override decision.

(c) Level Five:

(A) To obtain an administrative review of a Level 5 custody classification, an inmate must complete the CD1120aE form and send it to the Classification Manager. The request for review by the inmate shall include any supporting documentation to be considered in reviewing the appropriateness of the Level 5 custody classification.

(B) If an inmate has been assigned to the Intensive Management Unit (IMU), the matter shall be reviewed only once while the inmate is completing IMU programming.

(C) If an inmate has been retained at IMU Level 5 due to serious management concerns, the inmate will be provided a packet containing a request for Administrative Review of Retention at Custody Classification Level 5/ IMU Level 5 Placement (CD1120aE). An inmate may request further review of the Level 5 custody classification/ IMU Level 5 placement once annually.

(3) A copy of administrative review decisions will be provided to the inmate and retained in the inmate's institution file.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 4-2006, f. 5-31-06, cert. ef. 6-1-06; DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08; DOC 6-2014(Temp), f. 2-6-14, cert. ef. 2-12-14 thru 8-11-14; DOC 11-2014, f. & cert. ef. 5-1-14; DOC 1-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-104-0140
Classification Quality Assurance Review

(1) The Classification Manager is responsible for reviewing facility classification procedures and decisions.

(2) Reviewing shall consist of routine review of custody Level 1 and 2 placements and review of individual classification actions at each facility. Such reviews shall be conducted to ensure:

(a) The policies and procedures set forth in this rule are followed; and

(b) The actions taken by the facility are adequately documented.

(3) Findings inconsistent with rule and established procedures shall be documented and reported to the appropriate functional unit manager or to the Institution Administrator(s) for corrective action.

(4) The Classification Manager is responsible to review the last classification action for any inmate who is involved in an escape or escape attempt from a Department of Corrections facility and to submit a report to the Operations Division Institution Administrators.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 11-2008, f. 5-8-08, cert. ef. 5-13-08; DOC 6-2014(Temp), f. 2-6-14, cert. ef. 2-12-14 thru 8-11-14; DOC 11-2014, f. & cert. ef. 5-1-14; DOC 1-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

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Rule Caption: Assignment and Supervision of Inmates for Work Assignments and Unfenced Minimum Housing
Adm. Order No.: DOC 2-2015(Temp)
Filed with Sec. of State: 1-6-2015
Certified to be Effective: 1-6-15 thru 7-3-15
Notice Publication Date:
Rules Amended: 291-082-0100, 291-082-0105, 291-082-0110, 291-082-0115, 291-082-0120, 291-082-0130, 291-082-0135, 291-082-0140, 291-082-0145
Subject: These rule modifications are necessary to update the policy for the assessment and assignment of inmates for work assignments and unfenced minimum housing, and to ensure these rules align with revisions to the department rules for assigning custody classification levels to inmates OAR (291-104). Other changes are of a housekeeping nature to reflect operational changes within the agency.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-082-0100
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.445, 423.020, 423.030, 423.075 and Article I, Section 41 of the Oregon Constitution.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures relating to the assessment, assignment, and supervision of inmates assigned to community custody work crews, on-site work assignments and unfenced minimum housing.

(3) Policy: It is the policy of the department to establish specific eligibility criteria for inmates who are assigned to community custody work crews, on-site work assignments and unfenced minimum housing.

(a) Consistent with the mandates and purposes of Article I, section 41 of the Oregon Constitution, the Department of Corrections will seek opportunities to enter into cooperative agreements with local, state, federal governmental agencies, private non-profit and private entities for the use of inmate labor and services on work projects.

(b) The department will enforce the following procedures for inmate work crew supervision to support the safety and security of the community, staff, supervisors, and inmates.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; DOC 10-2005, f. & cert. ef. 8-1-05; Renumbered from 291-082-0010, DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0105
Definitions

(1) Agency Work Crew: One or more inmates assigned to work on an on-site or community crew.

(2) Agency Work Crew Supervisor: An employee or agent of the local, state or federal governmental agency or private non-profit and private entities who may supervise inmates assigned to an agency work crew pursuant to an intergovernmental agreement entered into by the agency and the Department of Corrections.

(3) Corrections Information System (CIS): A computer system dedicated to tracking information critical to the management of inmates and offenders under the custody, supervision or both of the Department of Corrections.

(4) Custody Level: One of five levels of supervision assigned to an inmate through initial and classification procedures in accordance with the DOC rule on Classification (Inmate) (OAR 291-104).

(a) Level 5: An inmate assigned at this custody level meets one of the following criteria:

(A) Has demonstrated behaviors causing serious management concerns, or has demonstrated behaviors that in the judgment of the Department present a threat sufficient to require special security housing on intensive management status.

(B) Has a sentence of death or is pending retrial in a case in which a sentence of death may be re-imposed.

(C) Has a pending trial for a case in which a sentence of death may be imposed.

(D) Is under investigation for or has been charged with the in-custody murder of another inmate or staff.

(b) Level 4: An inmate assigned at this custody level presents a serious risk of escape or institutional violence, or has time remaining of 121 months to life, with or without parole.

(c) Level 3: An inmate assigned at this custody level presents a moderate risk of escape, has a Level 3 detainer, has demonstrated behavior causing moderate management concern, or has time remaining of 49 to 121 months.

(d) Level 2: An inmate assigned at this custody level presents a limited risk of escape, or has demonstrated behavior causing limited management concern, and has time remaining of less than 49 months.

(e) Level 1: An inmate assigned at this custody level presents a minimal risk of escape, meets the criteria for Detainer-Not Applicable, has demonstrated behavior causing minimal management concern, has time remaining of less than 49 months.

(5) Department of Corrections Contractor: Any person under contractual agreement to provide services to the department; any person employed by private or public sector agencies who is serving under Department-sanctioned special assignment to provide services or support to the department programs. An agreement entered into under this section requires that the

person exercising custodial supervision over inmates receive security training approved and provided by the Department of Corrections

(6) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(7) Department of Corrections Employee: Any person employed full-time, part-time, or under any temporary appointment by the Department of Corrections.

(8) Designator: Information, alerts or statutory designations important for sentence computation and crucial to determining work crew eligibility, unfenced housing assignment, and the management of inmates and offenders both in institutions and in the community.

(9) Direct Supervision: The responsibility of authorized supervisors to ensure the on-site presence of an inmate while outside the institution secure perimeter, and to immediately report any authorized absence or departure.

(10) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(11) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(12) Institution Work Program Coordinator: A Department of Corrections employee who is responsible for overseeing daily planning and coordination of inmate work assignments.

(13) Protection/Restraining Order: Any valid court order intended to protect one person from another and restraining one person from any form of contact with another person.

(14) Stalking Conviction: Any court conviction for stalking as described in ORS 163.732 and 163.750.

(15) Stalking Order: Any court order prohibiting one person from stalking another as described in ORS 163.732 and 163.750.

(16) Unfenced Housing Assignment: A housing assignment to a Department of Corrections facility that does not have a secure perimeter fence.

(17) WHALE Work Assignment Levels:

(a) Inside: A work assignment restricted to inside the perimeter fence of a Department of Corrections facility.

(b) On-Site: A work assignment on the grounds of the facility in which an inmate is housed, but outside the perimeter fence of the facility.

(c) Community: A work assignment located outside the perimeter fence and off the grounds of the Department of Corrections facility in which an inmate is housed.

(18) Work Housing Assignment Level Evaluation (WHALE): The automated assessment program in the Corrections Information System (CIS) used by the Department of Corrections to determine an inmate's work assignment levels and unfenced housing assignment.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; DOC 10-2005, f. & cert. ef. 8-1-05; Renumbered from 291-082-0020, DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 21-2011(Temp), f. & cert. ef. 10-17-11 thru 4-13-12; DOC 5-2012, f. & cert. ef. 3-1-12; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0110
Work Housing Assignment Level Evaluation (WHALE) Eligibility

(1) Inside Work Assignment: All inmates at classification custody Level 1 or 2 are minimally eligible for an inside work assignment.

(2) Community Work Assignment: An inmate must meet the following criteria to be considered for a community work assignment:

(a) Served more than 60 days in DOC custody.

(b) No conviction for Arson I or Attempted Arson I.

(c) No conviction for a sex offense or a crime with a sexual element.

(d) No active protection/restraining order(s).

(e) No conviction for Stalking offense.

(f) No active court Stalking Order.

(g) Not found in violation of Sexual Assault or Sexual Coercion as described in OAR 291-105-0015, Rules of Misconduct.

(h) Minimal escape risk as defined in the Custody Classification Guide and the rule on Classification (Inmate) (OAR 291-104).

(i) No felony detainer(s) that are untried or expire after the inmate's projected release date.

(j) No multiple misdemeanor detainers that expire after the inmate's projected release date.

(k) No designators on file disqualifying community assignment.

(3) Unfenced Housing: An inmate must meet the following criteria to be considered for an unfenced housing assignment:

(a) Custody Classification Level 1.

(b) Meets all community work assignment criteria listed in subsection (2) above.

(c) No conviction for Arson II, Attempted Arson II, Reckless Burning or other related arson crimes, including attempts.

(d) No current escape designator, or any ESMO or ESSV designators, as defined in the Custody Classification Guide (OAR 291-104-0116).

(e) No misdemeanor detainer that is untried.

(f) No consecutive misdemeanor detainer that expires one year or less from the inmate's projected release date.

(4) On-Site Work Assignment: An inmate must meet the following criteria to be considered for an on-site work assignment:

(a) Meets criteria for an inside work assignment or community work assignment on the WHALE.

(b) Has served more than 60 days in DOC custody.

(c) No predatory sex offender designation in Oregon or any other state, and if a sex offender, scores 5 or below on the Static 99R. The Static 99R and definitions is attached to this rule.

(d) Is approved by the functional unit manager or designee.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 21-2011(Temp), f. & cert. ef. 10-17-11 thru 4-13-12; DOC 5-2012, f. & cert. ef. 3-1-12; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0115
Initial Work Housing Assignment Level Evaluation (WHALE)

(1) A WHALE shall be completed on all inmates who have been classified as Level 1 or Level 2 in order for the inmate to be considered for a community work assignment or for housing in an unfenced facility.

(2) The assigned counselor shall initiate the automated WHALE, review for accuracy of information imported from the CIS, and enter any additional information gleaned from file review or other sources.

(3) The WHALE shall be forwarded to the Correctional Rehabilitation Manager for approval. An evaluation is not considered official until approved by the Correctional Rehabilitation Manager or designee.

(4) All approved WHALE actions are historically recorded and maintained in the CIS system.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0120
Work Housing Assignment Level Evaluation (WHALE) Review

(1) An inmate's WHALE shall be reviewed when new information is received that affects the WHALE level.

(2) The inmate's assigned counselor will receive an automated alert when new information is received that will affect the WHALE level.

(3) The new WHALE action shall be forwarded to the Correctional Rehabilitation Manager or designee for approval. No WHALE action is official until approved by the Correctional Rehabilitation Manager or designee.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0130
Work Housing Assignment Level Evaluation Quality Assurance Review

(1) The Office of Population Management is responsible for reviewing institution WHALE procedures and decisions.

(2) Reviewing shall consist of routine review of Work Housing Assignment Level Evaluations at each DOC facility. Such reviews shall be conducted to ensure:

(a) The policies and procedures set forth in this rule are followed; and

(b) The actions taken by the facility are adequately documented.

(3) Findings inconsistent with rule and established procedures shall be documented and reported to the appropriate functional unit manager or designee.

(4) The Office of Population Management is responsible to review the last WHALE for any inmate who is involved in an escape or escape attempt from a Department of Corrections facility and to submit a report to the appropriate Institutions Administrator.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0135
Inmate Work Crews Agreements

(1) The Department of Corrections may, at its discretion, assign inmate work crews to work in the community on local, state, federal governmental agencies, private non-profit or private entity work projects.

(2) Facility functional unit managers will use private partnership review guidelines in determining appropriateness of private sector agreement requests.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; Renumbered from 291-082-0030, DOC 10-2005, f. & cert. ef. 8-1-05; Renumbered from 291-082-0021, DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0140
Supervision/Security Provisions for Inmate Work Crews

(1) If the Department of Corrections assigns an inmate work crew within three blocks of a school, the functional unit manager or designee will ensure notification is made to the affected school on dates, times and location of inmate work crew.

(2) When an inmate work crew is scheduled to work within city limits, a designee of the institution will notify the appropriate local law enforcement agency prior to the project start date.

(3) Inmate work crews working out-of-doors within a city or in a residential community located outside of a city will be supervised by a minimum of one supervisor for every ten inmates. The facility functional unit manager or designee may, with the approval of the Assistant Director of Operations or designee, assign additional inmates without an additional supervisor if an unforeseen and unique circumstance arises.

(4) The provisions specified in sections (2) and (3) are not required for inmate work crews deployed during natural disasters, including but not limited to, floods and forest fires.

(5) The provisions specified in sections (2) and (3) do not apply to inmate work crews assigned to work in programs operated by Oregon Corrections Enterprises under ORS 421.344 to 421.367.

(6) All assigned inmates will be dressed uniformly in clothing clearly stenciled in orange writing that designates them as inmates.

(7) Upon arrival at a worksite, Department of Corrections signs stating an inmate work crew is present will be posted in or near the work area in a place that is visible to the public.

(8) While at the work site, supervisors will maintain direct supervision of all assigned inmates, unless the nature of a work task requires the supervisor to monitor an inmate by physically moving throughout the worksite.

(9) At a minimum, the inmate work crew supervisor will account for each inmate once every 30 minutes.

(10) All inmate work crews will be supervised by an employee of the Department of Corrections or Oregon Corrections Enterprises, unless performing a work project for a local, state, or federal governmental agency. The crew may be supervised by an employee of a governmental agency pursuant to an intergovernmental agreement entered into by that agency and the Department of Corrections.

(11) The department will require in its intergovernmental agreements with local, state or federal government agencies that the employees exercising supervision over inmates assigned to agency work crews receive appropriate training in accordance with OAR 291-082-0145.

(12) Institution post orders will be maintained in support of this rule.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 3-2002, f. & cert. ef. 1-16-02; Renumbered from 291-082-0035, DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

291-082-0145
Work Crew Supervision Training

(1) Before supervising a community inmate work crew, all employees of the Department of Corrections and other local, state or federal governmental agencies that have been designated to supervise inmates assigned to community work crews will minimally receive eight hours of supervisory training. This training shall be developed, approved, and provided by the Department of Corrections Professional Development Unit staff member or adjunct training.

(2) The department will provide the designated employees periodic follow-up training at least annually. Training may be provided by the department more frequently if the department determines additional training to be necessary or advisable.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075
Hist.: DOC 3-2002, f. & cert. ef. 1-16-02; Renumbered from 291-082-0045, DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15

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Department of Energy
Chapter 330

Rule Caption: Amending Residential Energy Tax Credit pass-through eligibility rules.
Adm. Order No.: DOE 9-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 330-070-0014
Subject: This rule amendment for the Residential Energy Tax Credit program is a continuation of the permanent RETC rules filed in November 2014. The rule modifies the RETC pass-through eligibility to align with ORS 316.116. An eligible RETC pass-through partner must be subject to tax under ORS chapter 316.
Rules Coordinator: Elizabeth Ross—(503) 373-8534

330-070-0014
Pass-Through Eligibility

(1) An individual, estate or trust subject to tax under ORS Chapter 316 that pays the present value to purchase the approved tax credit from the applicant may be eligible to claim the tax credit in place of the applicant.

(2) In accordance with ORS 469B.106(10) the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than $1,500 the present value is 90 percent of the tax credit amount.

(b) For tax credits less than $1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit certificate to the pass through partner when the applicant confirms receipt of an amount equal to the present value of the tax credit and relinquishes any claim to the credit.

(4) A tax credit may be transferred or sold only once.

(5) A tax credit may not be transferred in portions. Only the whole tax credit amount may be transferred.

Stat. Auth.: ORS 469.040, 469B.106; 469B.109
Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115
Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 9-2014, f. 12-29-14, cert. ef. 1-1-15

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Department of Environmental Quality
Chapter 340

Rule Caption: Water Quality Standards Revisions for Freshwater Ammonia Criteria
Adm. Order No.: DEQ 1-2015
Filed with Sec. of State: 1-7-2015
Certified to be Effective: 1-7-15
Notice Publication Date: 10-1-2014
Rules Adopted: 340-041-8033
Rules Amended: 340-041-0002, 340-041-0007, 340-041-0028, 340-041-0033, 340-041-0124, 340-041-0310, 340-041-0315
Subject: Short summary

The proposed rule amendments will:

Adopt U.S. Environmental Protection Agency's latest 2013 national recommendations for freshwater ammonia criteria, which are:

- Less stringent than Oregon's current chronic criteria for ammonia;
- Generally more stringent than Oregon's acute criteria for ammonia; and
- Account for mussel and snail sensitivity to ammonia.

Likely address EPA's Jan. 31, 2013, disapproval of Oregon's ammonia criteria, which the EQC adopted in 2004.

The National Marine Fisheries Service's Biological Opinion indicated that Oregon's 2004 adopted ammonia criteria would cause jeopardy to threatened and endangered species. EPA and NMFS are evaluating how EPA's latest 2013 recommendations are consistent with the Reasonable and Prudent Alternatives in NMFS's jeopardy opinion. If NMFS determines that EPA's criteria derivation method generally followed the Reasonable and Prudent Alternatives, then NMFS can conclude that EPA's 2013 ammonia criteria protect threatened and endangered species in Oregon, thus satisfying Endangered Species Act consultation requirements. A "no jeopardy" decision from NMFS would likely lead to EPA approval of Oregon's proposed ammonia criteria.

Correct an error in the stated applicability of the pH standard for the main stem Snake River.

Amend the Umatilla Basin-specific standards and uses and remove a term from the definitions section to be consistent with EPA's partial disapproval of DEQ's site-specific criteria and use designations for the West Division Main Canal.

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

In addition, DEQ will add a note below two rule sections to notify the reader that EPA disapproved the statewide natural conditions criterion in OAR 340-041-0007(2) and the natural conditions criterion for temperature in OAR-340-041-0028(8). This means that these provisions may not be applied for Clean Water Act purposes, such as wastewater discharge permits or total maximum daily loads. DEQ did not accept public comments on the notes because they only provide information and do not amend the rule.

Brief history:

Currently, Oregon's ammonia criteria are based on 1985 EPA recommendations. In 2004, Oregon adopted revised ammonia criteria based on updated EPA recommendations from 1999. However, these adopted criteria have never been effective because EPA did not approve the revisions. In August 2012, NMFS, as part of Endangered Species Act consultation requirements, determined that the 1999 EPA ammonia criteria that Oregon adopted would jeopardize threatened and endangered fish. Based on NMFS' determination and updated toxicity data indicating that mussels are the most sensitive species to ammonia, EPA disapproved Oregon's criteria on Jan. 31, 2013.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-041-0002
Definitions

Definitions in this rule apply to all basins unless context requires otherwise.

(1) "401 Water Quality Certification" means a determination made by DEQ that a dredge and fill activity, private hydropower facility, or other federally licensed or permitted activity that may result in a discharge to waters of the state has adequate terms and conditions to prevent an exceedance of water quality criteria. The federal permit in question may not be issued without this state determination in accordance with the Federal Clean Water Act, section 401 (33 USC 1341).

(2) "Ambient Stream Temperature" means the stream temperature measured at a specific time and place. The selected location for measuring stream temperature must be representative of the stream in the vicinity of the point being measured.

(3) "Anthropogenic," when used to describe "sources" or "warming," means that which results from human activity.

(4) "Applicable Criteria" means the biologically based temperature criteria in OAR 340-041-0028(4), the superseding cold water protection criteria in 340-041-0028(11) or the superseding natural condition criteria in 340-041-0028(8). The applicable criteria may also be site-specific criteria approved by U.S. EPA. A subbasin may have a combination of applicable temperature criteria derived from some or all of these numeric and narrative criteria.

(5) "Appropriate Reference Site or Region" means a site on the same water body or within the same basin or ecoregion that has similar habitat conditions and represents the water quality and biological community attainable within the areas of concern.

(6) "Aquatic Species" means plants or animals that live at least part of their life cycle in waters of the state.

(7) "Basin" means a third-field hydrologic unit as identified by the U.S. Geological Survey.

(8) "BOD" means 5-day, 20°C Biochemical Oxygen Demand.

(9) "Cold-Water Aquatic Life" means aquatic organisms that are physiologically restricted to cold water including, but not limited to, native salmon, steelhead, mountain whitefish, char including bull trout, and trout.

(10) "Cold Water Refugia" means those portions of a water body where or times during the diel temperature cycle when the water temperature is at least 2 degrees Celsius colder than the daily maximum temperature of the adjacent well-mixed flow of the water body.

(11) "Commission" or "EQC" means the Oregon Environmental Quality Commission.

(12) "Cool Water Aquatic Life" means aquatic organisms that are physiologically restricted to cool waters including, but not limited to, native sturgeon, Pacific lamprey, suckers, chub, sculpins and certain species of cyprinids (minnows.)

(13) "Core Cold Water Habitat Use" means waters expected to maintain temperatures within the range generally considered optimal for salmon and steelhead rearing, or that are suitable for bull trout migration, foraging and sub-adult rearing that occurs during the summer. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 180A, 201A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(14) "Critical Habitat" means those areas that support rare, threatened, or endangered species or serve as sensitive spawning and rearing areas for aquatic life as designated by the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration-Fisheries according to the Endangered Species Act (16 U.S. Code § 1531).

(15) "Daily Mean" for dissolved oxygen means the numeric average of an adequate number of data to describe the variation in dissolved oxygen concentration throughout a day, including daily maximums and minimums. For calculating the mean, concentrations in excess of 100 percent of saturation are valued at the saturation concentration.

(16) "Department" or "DEQ" means the Oregon State Department of Environmental Quality.

(17) "Designated Beneficial Use" means the purpose or benefit to be derived from a water body as designated by the Water Resources Department or the Water Resources Commission.

(18) "DO" means dissolved oxygen.

(19) "Ecological Integrity" means the summation of chemical, physical, and biological integrity capable of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region.

(20) "Epilimnion" means the seasonally stratified layer of a lake or reservoir above the metalimnion; the surface layer.

(21) "Erosion Control Plan" means a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.

(22) "Estuarine Waters" means all mixed fresh and oceanic waters in estuaries or bays from the point of oceanic water intrusion inland to a line connecting the outermost points of the headlands or protective jetties.

(23) "High Quality Waters" means those waters that meet or exceed levels necessary to support the propagation of fish, shellfish and wildlife; recreation in and on the water; and other designated beneficial uses.

(24) "Hypolimnion" means the seasonally stratified layer of a lake or reservoir below the metalimnion; the bottom layer.

(25) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

(26) "In Lieu Fee" means a fee collected by a jurisdiction in lieu of requiring construction of onsite stormwater quality control facilities.

(27) "Intergravel Dissolved Oxygen" (IGDO) means the concentration of oxygen measured in the water within the stream bed gravels. Measurements should be taken within a limited time period before emergence of fry.

(28) "Jurisdiction" means any city or county agency in the Tualatin River and Oswego Lake subbasin that regulates land development activities within its boundaries by approving plats or site plans or issuing permits for land development.

(29) "Land Development" means any human-induced change to improved or unimproved real estate including, but not limited to, construction, installation or expansion of a building or other structure; land division; drilling; or site alteration such as land surface mining, dredging, grading,

construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(30) "Load Allocation" or "LA" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading that may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Whenever possible, natural and nonpoint source loads should be distinguished.

(31) "Loading Capacity" or "LC" means the greatest amount of loading that a water body can receive without violating water quality standards.

(32) "Low Flow Period" means the flows in a stream resulting primarily from groundwater discharge or base flows augmented from lakes and storage projects during the driest period of the year. The dry weather period varies across the state according to climate and topography. Wherever the low flow period is indicated in Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.

(33) "Managed Lakes" refers to lakes in which hydrology is managed by controlling the rate or timing of inflow or outflow.

(34) "Marine Waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of the State of Oregon.

(35) "mg/l" or "mg/L" means milligrams per liter.

(36) "Metalimnion" means the seasonal, thermally stratified layer of a lake or reservoir that is characterized by a rapid change in temperature with depth and that effectively isolates the waters of the epilimnion from those of the hypolimnion during the period of stratification; the middle layer.

(37) "Migration Corridors" mean those waters that are predominantly used for salmon and steelhead migration during the summer and have little or no anadromous salmonid rearing in the months of July and August. Migration corridors are designated in Tables 101B and 121B and Figures 151A, 170A, 300A and 340A under OAR 340-041-0101 to 340-041-0340.

(38) "Minimum" for dissolved oxygen means the minimum recorded concentration including seasonal and diurnal minimums.

(39) "Monthly (30-day) Mean Minimum" for dissolved oxygen means the minimum of the 30 consecutive-day floating averages of the calculated daily mean dissolved oxygen concentration.

(40) "Natural Conditions" means conditions or circumstances affecting the physical, chemical, or biological integrity of a water of the state that are not influenced by past or present anthropogenic activities. Disturbances from wildfire, floods, earthquakes, volcanic or geothermal activity, wind, insect infestation and diseased vegetation are considered natural conditions.

(41) "Natural Thermal Potential" means the determination of the thermal profile of a water body using best available methods of analysis and the best available information on the site-potential riparian vegetation, stream geomorphology, stream flows and other measures to reflect natural conditions.

(42) "Nonpoint Sources" means any source of water pollution other than a point source. Generally, a nonpoint source is a diffuse or unconfined source of pollution where wastes can either enter into waters of the state or be conveyed by the movement of water into waters of the state.

(43) "Ocean Waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of Oregon.

(44) "Outstanding Resource Waters" means waters designated by the EQC where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values or where special water quality protection is needed to maintain critical habitat areas.

(45) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any water of the state that either by itself or in connection with any other substance present can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wildlife, fish, other aquatic life or the habitat thereof.

(46) "Point Source" means a discernible, confined, and discrete conveyance including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

(47) "Public Water" means the same as "waters of the state".

(48) "Public Works Project" means any land development conducted or financed by a local, state, or federal governmental body.

(49) "Reserve Capacity" means that portion of a receiving stream's loading capacity that has not been allocated to point sources or to nonpoint sources and natural background as waste load allocations or load allocations, respectively. The reserve capacity includes that loading capacity that has been set aside for a safety margin and is otherwise unallocated.

(50) "Resident Biological Community" means aquatic life expected to exist in a particular habitat when water quality standards for a specific ecoregion, basin or water body are met. This must be established by accepted biomonitoring techniques.

(51) "Salmon" means chinook, chum, coho, sockeye and pink salmon.

(52) "Salmon and Steelhead Spawning Use" means waters that are or could be used for salmon and steelhead spawning, egg incubation, and fry emergence. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B.

(53) "Salmon and Trout Rearing and Migration Use" means thermally suitable rearing habitat for salmon, steelhead, rainbow trout, and cutthroat trout as designated on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(54) "Salmonid or Salmonids" means native salmon, trout, mountain whitefish and char including bull trout. For purposes of Oregon water quality standards, salmonid does not include brook or brown trout because they are introduced species.

(55) "Secondary Treatment" means the following depending on the context:

(a) For sewage wastes, secondary treatment means the minimum level of treatment mandated by U.S. Environmental Protection Agency regulations pursuant to Public Law 92-500.

(b) For industrial and other waste sources, secondary treatment means control equivalent to best practicable treatment.

(56) "Seven-Day Average Maximum Temperature" means a calculation of the average of the daily maximum temperatures from seven consecutive days made on a rolling basis.

(57) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage of industrial wastes or wastes, as defined in this rule, may also be considered "sewage" within the meaning of this division.

(58) "Short-Term Disturbance" means a temporary disturbance of six months or less when water quality standards may be violated briefly but not of sufficient duration to cause acute or chronic effects on beneficial uses.

(59) "Spatial Median" means the value that falls in the middle of a data set of multiple intergravel dissolved oxygen (IGDO) measurements taken within a spawning area. Half the samples should be greater than and half the samples should be less than the spatial median.

(60) "SS" means suspended solids.

(61) "Stormwater Quality Control Facility" means any structure or drainage way designed, constructed and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may also include, but is not be limited to, existing features such as wetlands, water quality swales and ponds maintained as stormwater quality control facilities.

(62) "Subbasin" means a fourth-field hydrologic unit as identified by the U.S. Geological Survey.

(63) "Summer" means June 1 through September 30 of each calendar year.

(64) "Threatened or Endangered Species" means aquatic species listed as either threatened or endangered under the federal Endangered Species Act (16 U.S. Code § 1531 et seq. and Title 50 of the Code of Federal Regulations).

(65) "Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If

Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(66) "Toxic Substance" means those pollutants or combinations of pollutants, including disease-causing agents, that after introduction to waters of the state and upon exposure, ingestion, inhalation or assimilation either directly from the environment or indirectly by ingestion through food chains will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in any organism or its offspring.

(67) "Wasteload Allocation" or "WLA" means the portion of a receiving water's loading capacity allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(68) "Warm-Water Aquatic Life" means the aquatic communities that are adapted to warm-water conditions and do not contain either cold- or cool-water species.

(69) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances that may cause or tend to cause pollution of any water of the state.

(70) "Water Quality Limited" means one of the following:

(a) A receiving stream that does not meet narrative or numeric water quality criteria during the entire year or defined season even after the implementation of standard technology;

(b) A receiving stream that achieves and is expected to continue to achieve narrative or numeric water quality criteria but uses higher than standard technology to protect beneficial uses;

(c) A receiving stream for which there is insufficient information to determine whether water quality criteria are being met with higher-than-standard treatment technology or a receiving stream that would not be expected to meet water quality criteria during the entire year or defined season without higher than standard technology.

(71) "Water Quality Swale" means a natural depression or wide, shallow ditch used to temporarily store, route or filter runoff for the purpose of improving water quality.

(72) "Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(73) "Weekly (seven-day) Mean Minimum" for dissolved oxygen means the minimum of the seven consecutive-day floating average of the calculated daily mean dissolved oxygen concentration.

(74) "Weekly (seven-day) Minimum Mean" for dissolved oxygen means the minimum of the seven consecutive-day floating average of the daily minimum concentration. For application of the criteria, this value is the reference for diurnal minimums.

(75) "Without Detrimental Changes in the Resident Biological Community" means no loss of ecological integrity when compared to natural conditions at an appropriate reference site or region.

Stat. Auth.: ORS 468.020, 468B.010, 468B.015, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 2-2007, f. & cert. ef. 3-15-07; DEQ 3-2012, f. & cert. ef. 5-21-12; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0007
Statewide Narrative Criteria

(1) Notwithstanding the water quality standards contained in this Division, the highest and best practicable treatment and/or control of wastes, activities, and flows must in every case be provided so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels.

(2) Where a less stringent natural condition of a water of the State exceeds the numeric criteria set out in this Division, the natural condition supersedes the numeric criteria and becomes the standard for that water body. However, there are special restrictions, described in OAR 340-041-0004(9)(a)(D)(iii), that may apply to discharges that affect dissolved oxygen.

NOTE: On August 8, 2013, the Environmental Protection Agency disapproved rule section OAR 340-041-0007(2). Consequently, section (2) is no longer effective as a water quality criterion for purposes of CWA Section 303(c) and it cannot be used for issuing certifications under CWA Section 401, permits under CWA Section 402, or total maximum daily loads under CWA section 303(d).

(3) For any new waste sources, alternatives that utilize reuse or disposal with no discharge to public waters must be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in OAR 340-041-0004(9).

(4) No discharges of wastes to lakes or reservoirs may be allowed except as provided in section OAR 340-041-0004(9).

(5) Log handling in public waters must conform to current Commission policies and guidelines.

(6) Sand and gravel removal operations must be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a watertight berm wherever physically practicable. Recirculation and reuse of process water must be required wherever practicable. Discharges or seepage or leakage losses to public waters may not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

(7) Road building and maintenance activities must be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

(8) In order to improve controls over nonpoint sources of pollution, federal, State, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects; and

(e) Federal water quality restoration plans.

(9) The development of fungi or other growths having a deleterious effect on stream bottoms, fish or other aquatic life, or that are injurious to health, recreation, or industry may not be allowed;

(10) The creation of tastes or odors or toxic or other conditions that are deleterious to fish or other aquatic life or affect the potability of drinking water or the palatability of fish or shellfish may not be allowed;

(11) The formation of appreciable bottom or sludge deposits or the formation of any organic or inorganic deposits deleterious to fish or other aquatic life or injurious to public health, recreation, or industry may not be allowed;

(12) Objectionable discoloration, scum, oily sheens, or floating solids, or coating of aquatic life with oil films may not be allowed;

(13) Aesthetic conditions offensive to the human senses of sight, taste, smell, or touch may not be allowed;

(14) Radioisotope concentrations may not exceed maximum permissible concentrations (MPC's) in drinking water, edible fishes or shellfishes, wildlife, irrigated crops, livestock and dairy products, or pose an external radiation hazard;

(15) Minimum Design Criteria for Treatment and Control of Wastes. Except as provided in OAR 340-041-0101 through 340-041-0350, and subject to the implementation requirements set forth in 340-041-0061, prior to discharge of any wastes from any new or modified facility to any waters of the State, such wastes must be treated and controlled in facilities designed in accordance with the following minimum criteria.

(a) In designing treatment facilities, average conditions and a normal range of variability are generally used in establishing design criteria. A facility once completed and placed in operation should operate at or near the design limit most of the time but may operate below the design criteria limit at times due to variables which are unpredictable or uncontrollable. This is particularly true for biological treatment facilities. The actual operating limits are intended to be established by permit pursuant to ORS 468.740 and recognize that the actual performance level may at times be less than the design criteria.

(A) Sewage wastes:

(i) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) may not exceed one unless otherwise approved by the Commission;

(ii) Sewage wastes must be disinfected, after treatment, equivalent to thorough mixing with sufficient chlorine to provide a residual of at least 1 part per million after 60 minutes of contact time unless otherwise specifically authorized by permit;

(iii) Positive protection must be provided to prevent bypassing raw or inadequately treated sewage to public waters unless otherwise approved by the Department where elimination of inflow and infiltration would be necessary but not presently practicable; and

(iv) More stringent waste treatment and control requirements may be imposed where special conditions make such action appropriate.

(B) Industrial wastes:

(i) After maximum practicable in-plant control, a minimum of secondary treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where bacterial organisms of public health significance are present, and control of toxic or other deleterious substances);

(ii) Specific industrial waste treatment requirements may be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

(I) The uses that are or may likely be made of the receiving stream;

(II) The size and nature of flow of the receiving stream;

(III) The quantity and quality of wastes to be treated; and

(IV) The presence or absence of other sources of pollution on the same watershed.

(iii) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements may be determined utilizing appropriate bioassays;

(iv) Industrial cooling waters containing significant heat loads must be subjected to off-stream cooling or heat recovery prior to discharge to public waters;

(v) Positive protection must be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters;

(vi) Facilities must be provided to prevent and contain spills of potentially toxic or hazardous materials.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 5-2013, f. & cert. ef. 6-21-13; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0028
Temperature

(1) Background. Water temperatures affect the biological cycles of aquatic species and are a critical factor in maintaining and restoring healthy salmonid populations throughout the State. Water temperatures are influenced by solar radiation, stream shade, ambient air temperatures, channel morphology, groundwater inflows, and stream velocity, volume, and flow. Surface water temperatures may also be warmed by anthropogenic activities such as discharging heated water, changing stream width or depth, reducing stream shading, and water withdrawals.

(2) Policy. It is the policy of the Commission to protect aquatic ecosystems from adverse warming and cooling caused by anthropogenic activities. The Commission intends to minimize the risk to cold-water aquatic ecosystems from anthropogenic warming, to encourage the restoration and protection of critical aquatic habitat, and to control extremes in temperature fluctuations due to anthropogenic activities. The Commission recognizes that some of the State's waters will, in their natural condition, not provide optimal thermal conditions at all places and at all times that salmonid use occurs. Therefore, it is especially important to minimize additional warming due to anthropogenic sources. In addition, the Commission acknowledges that control technologies, best management practices and other measures to reduce anthropogenic warming are evolving and that the implementation to meet these criteria will be an iterative process. Finally, the Commission notes that it will reconsider beneficial use designations in the event that man-made obstructions or barriers to anadromous fish passage are removed and may justify a change to the beneficial use for that water body.

(3) Purpose. The purpose of the temperature criteria in this rule is to protect designated temperature-sensitive, beneficial uses, including specific salmonid life cycle stages in waters of the State.

(4) Biologically Based Numeric Criteria. Unless superseded by the natural conditions criteria described in section (8) of this rule, or by subsequently adopted site-specific criteria approved by EPA, the temperature criteria for State waters supporting salmonid fishes are as follows:

(a) The seven-day-average maximum temperature of a stream identified as having salmon and steelhead spawning use on subbasin maps and tables set out in OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B, may not exceed 13.0 degrees Celsius (55.4 degrees Fahrenheit) at the times indicated on these maps and tables;

(b) The seven-day-average maximum temperature of a stream identified as having core cold water habitat use on subbasin maps set out in OAR 340-041-101 to 340-041-340: Figures 130A, 151A, 160A, 170A, 180A, 201A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A, may not exceed 16.0 degrees Celsius (60.8 degrees Fahrenheit);

(c) The seven-day-average maximum temperature of a stream identified as having salmon and trout rearing and migration use on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A, may not exceed 18.0 degrees Celsius (64.4 degrees Fahrenheit);

(d) The seven-day-average maximum temperature of a stream identified as having a migration corridor use on subbasin maps and tables OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 151A, 170A, 300A, and 340A, may not exceed 20.0 degrees Celsius (68.0 degrees Fahrenheit). In addition, these water bodies must have coldwater refugia that are sufficiently distributed so as to allow salmon and steelhead migration without significant adverse effects from higher water temperatures elsewhere in the water body. Finally, the seasonal thermal pattern in Columbia and Snake Rivers must reflect the natural seasonal thermal pattern;

(e) The seven-day-average maximum temperature of a stream identified as having Lahontan cutthroat trout or redband trout use on subbasin maps and tables set out in OAR 340-041-0101 to 340-041-0340: Tables 121B, 140B, 190B, and 250B, and Figures 180A, 201A, 260A and 310A may not exceed 20.0 degrees Celsius (68.0 degrees Fahrenheit);

(f) The seven-day-average maximum temperature of a stream identified as having bull trout spawning and juvenile rearing use on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130B, 151B, 160B, 170B, 180A, 201A, 260A, 310B, and 340B, may not exceed 12.0 degrees Celsius (53.6 degrees Fahrenheit). From August 15 through May 15, in bull trout spawning waters below Clear Creek and Mehlhorn reservoirs on Upper Clear Creek (Pine Subbasin), below Laurance Lake on the Middle Fork Hood River, and below Carmen reservoir on the Upper McKenzie River, there may be no more than a 0.3 degrees Celsius (0.5 Fahrenheit) increase between the water temperature immediately upstream of the reservoir and the water temperature immediately downstream of the spillway when the ambient seven-day-average maximum stream temperature is 9.0 degrees Celsius (48 degrees Fahrenheit) or greater, and no more than a 1.0 degree Celsius (1.8 degrees Fahrenheit) increase when the seven-day-average stream temperature is less than 9 degrees Celsius.

(5) Unidentified Tributaries. For waters that are not identified on the "Fish Use Designations" maps referenced in section (4) of this rule, the applicable criteria for these waters are the same criteria as is applicable to the nearest downstream water body depicted on the applicable map. This section (5) does not apply to the "Salmon and Steelhead Spawning Use Designations" maps.

(6) Natural Lakes. Natural lakes may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the natural condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life. Absent a discharge or human modification that would reasonably be expected to increase temperature, DEQ will presume that the ambient temperature of a natural lake is the same as its natural thermal condition.

(7) Oceans and Bays. Except for the Columbia River above river mile 7, ocean and bay waters may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the natural condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life. Absent a discharge or human modification that would reasonably be expected to increase temperature, DEQ will presume that the ambient temperature of the ocean or bay is the same as its natural thermal condition.

(8) Natural Conditions Criteria. Where the department determines that the natural thermal potential of all or a portion of a water body exceeds the biologically-based criteria in section (4) of this rule, the natural thermal potential temperatures supersede the biologically-based criteria, and are deemed to be the applicable temperature criteria for that water body.

NOTE: On August 8, 2013, the Environmental Protection Agency disapproved rule section OAR 340-041-0028(8). Consequently, section (8) is no longer effective as a water quality criterion for purposes of CWA Section 303(c) and it cannot be used for issuing certifications under CWA Section 401, permits under CWA Section 402, or total maximum daily loads under CWA section 303(d).

(9) Cool Water Species.

(a) No increase in temperature is allowed that would reasonably be expected to impair cool water species. Waters of the State that support cool water species are identified on subbasin tables and figures set out in OAR 340-041-0101 to 340-041-0340; Tables 140B, 190B and 250B, and Figures 180A, 201A and 340A.

(b) See OAR 340-041-0185 for a basin specific criterion for the Klamath River.

(10) Borax Lake Chub. State waters in the Malheur Lake Basin supporting the Borax Lake chub may not be cooled more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) below the natural condition.

(11) Protecting Cold Water.

(a) Except as described in subsection (c) of this rule, waters of the State that have summer seven-day-average maximum ambient temperatures that are colder than the biologically based criteria in section (4) of this rule, may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the colder water ambient temperature. This provision applies to all sources taken together at the point of maximum impact where salmon, steelhead or bull trout are present.

(b) A point source that discharges into or above salmon & steelhead spawning waters that are colder than the spawning criterion, may not cause the water temperature in the spawning reach where the physical habitat for spawning exists during the time spawning through emergence use occurs, to increase more than the following amounts after complete mixing of the effluent with the river:

(A) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is 10 to 12.8 degrees Celsius, the allowable increase is 0.5 Celsius above the 60 day average; or

(B) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is less than 10 degrees Celsius, the allowable increase is 1.0 Celsius above the 60 day average, unless the source provides analysis showing that a greater increase will not significantly impact the survival of salmon or steelhead eggs or the timing of salmon or steelhead fry emergence from the gravels in downstream spawning reach.

(c) The cold water protection narrative criteria in subsection (a) do not apply if:

(A) There are no threatened or endangered salmonids currently inhabiting the water body;

(B) The water body has not been designated as critical habitat; and

(C) The colder water is not necessary to ensure that downstream temperatures achieve and maintain compliance with the applicable temperature criteria.

(12) Implementation of the Temperature Criteria.

(a) Minimum Duties. There is no duty for anthropogenic sources to reduce heating of the waters of the State below their natural condition. Similarly, each anthropogenic point and nonpoint source is responsible only for controlling the thermal effects of its own discharge or activity in accordance with its overall heat contribution. In no case may a source cause more warming than that allowed by the human use allowance provided in subsection (b) of this rule.

(b) Human Use Allowance. Insignificant additions of heat are authorized in waters that exceed the applicable temperature criteria as follows:

(A) Prior to the completion of a temperature TMDL or other cumulative effects analysis, no single NPDES point source that discharges into a temperature water quality limited water may cause the temperature of the water body to increase more than 0.3 degrees Celsius (0.5 Fahrenheit) above the applicable criteria after mixing with either twenty five (25) percent of the stream flow, or the temperature mixing zone, whichever is more restrictive; or

(B) Following a temperature TMDL or other cumulative effects analysis, waste load and load allocations will restrict all NPDES point sources and nonpoint sources to a cumulative increase of no greater than 0.3 degrees Celsius (0.5 Fahrenheit) above the applicable criteria after complete mixing in the water body, and at the point of maximum impact.

(C) Point sources must be in compliance with the additional mixing zone requirements set out in OAR 340-041-0053(2)(d).

(D) A point source in compliance with the temperature conditions of its NPDES permit is deemed in compliance with the applicable criteria.

(c) Air Temperature Exclusion. A water body that only exceeds the criteria set out in this rule when the exceedance is attributed to daily maximum air temperatures that exceed the 90th percentile value of annual maximum seven-day average maximum air temperatures calculated using at least 10 years of air temperature data, will not be listed on the section 303(d) list of impaired waters and sources will not be considered in violation of this rule.

(d) Low Flow Conditions. An exceedance of the biologically-based numeric criteria in section (4) of this rule, or an exceedance of the natural condition criteria in section (8) of this rule will not be considered a permit violation during stream flows that are less than the 7Q10 low flow condition for that water body.

(e) Other Nonpoint Sources. The department may, on a case-by-case basis, require nonpoint sources (other than forestry and agriculture), including private hydropower facilities regulated by a 401 water quality certification, that may contribute to warming of State waters beyond 0.3 degrees Celsius (0.5 degrees Fahrenheit), and are therefore designated as water-quality limited, to develop and implement a temperature management plan to achieve compliance with applicable temperature criteria or an applicable load allocation in a TMDL pursuant to OAR 340-042-0080.

(A) Each plan must ensure that the nonpoint source controls its heat load contribution to water temperatures such that the water body experiences no more than a 0.3 degrees Celsius (0.5 degree Fahrenheit) increase above the applicable criteria from all sources taken together at the maximum point of impact.

(B) Each plan must include a description of best management practices, measures, effluent trading, and control technologies (including eliminating the heat impact on the stream) that the nonpoint source intends to use to reduce its temperature effect, a monitoring plan, and a compliance schedule for undertaking each measure.

(C) The Department may periodically require a nonpoint source to revise its temperature management plan to ensure that all practical steps have been taken to mitigate or eliminate the temperature effect of the source on the water body.

(f) Compliance Methods. Anthropogenic sources may engage in thermal water quality trading in whole or in part to offset its temperature discharge, so long as the trade results in at least a net thermal loading decrease in anthropogenic warming of the water body, and does not adversely affect a threatened or endangered species. Sources may also achieve compliance, in whole or in part, by flow augmentation, hyporheic exchange flows, outfall relocation, or other measures that reduce the temperature increase caused by the discharge.

(g) Release of Stored Water. Stored cold water may be released from reservoirs to cool downstream waters in order to achieve compliance with the applicable numeric criteria. However, there can be no significant adverse impact to downstream designated beneficial uses as a result of the releases of this cold water, and the release may not contribute to violations of other water quality criteria. Where the Department determines that the release of cold water is resulting in a significant adverse impact, the Department may require the elimination or mitigation of the adverse impact.

(13) Site-Specific Criteria. The Department may establish, by separate rulemaking, alternative site-specific criteria for all or a portion of a water body that fully protects the designated use.

(a) These site-specific criteria may be set on a seasonal basis as appropriate.

(b) The Department may use, but is not limited by the following considerations when calculating site-specific criteria:

(A) Stream flow;

(B) Riparian vegetation potential;

(C) Channel morphology modifications;

(D) Cold water tributaries and groundwater;

(E) Natural physical features and geology influencing stream temperatures; and

(F) Other relevant technical data.

(c) DEQ may consider the thermal benefit of increased flow when calculating the site-specific criteria.

(d) Once established and approved by EPA, the site-specific criteria will be the applicable criteria for the water bodies affected.

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

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

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

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 1-2007, f. & cert. ef. 3-14-07; DEQ 2-2007, f. & cert. ef. 3-15-07; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 5-2013, f. & cert. ef. 6-21-13; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0033

Toxic Substances

Effectiveness. Amendments to this rule and associated revisions to Table 30 under OAR 340-041-8033 do not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act until EPA approves the revisions it identifies as water quality standards according to 40 CFR 131.21 (4/27/2000).

(1) Toxic Substances Narrative. Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sedi-

ments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife or other designated beneficial uses.

(2) Aquatic Life Numeric Criteria. Levels of toxic substances in waters of the state may not exceed the applicable aquatic life criteria listed in Table 30 under OAR 340-041-8033.

(3) Human Health Numeric Criteria. The criteria for waters of the state listed in Table 40 under OAR 340-041-8033 are established to protect Oregonians from potential adverse health effects associated with long-term exposure to toxic substances associated with consumption of fish, shellfish and water.

(4) To establish permit or other regulatory limits for toxic substances without criteria in Table 30 under OAR 340-041-8033 or Table 40 under 340-041-8033, DEQ may use the guidance values in Table 31 under 340-041-8033, public health advisories, and published scientific literature. DEQ may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges or chemical substances without numeric criteria.

(5) Establishing Site-Specific Background Pollutant Criteria: This provision is a performance based water quality standard that results in site-specific human health water quality criteria under the conditions and procedures specified in this rule section. It addresses existing permitted discharges of a pollutant removed from the same body of water. For waterbodies where a discharge does not increase the pollutant's mass and does not increase the pollutant concentration by more than 3 percent, and where the water body meets a pollutant concentration associated with a risk level of 1 x 10-4, DEQ concludes that the pollutant concentration continues to protect human health.

(a) Definitions: As used in this section:

(A) "Background pollutant concentration" means the ambient water body concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or result from upstream human activity.

(B) An "intake pollutant" is the amount of a pollutant present in waters of the state (including groundwater) as provided in subsection (C), below, at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water.

(C) "Same body of water": An intake pollutant is considered to be from the "same body of water" as the discharge if DEQ finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. To make this finding, DEQ requires information showing that:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and,

(ii) There is a direct hydrological connection between the intake and discharge points.

(I) DEQ may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(II) An intake pollutant from groundwater may be considered to be from the "same body of water" if DEQ determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. A pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to past or present human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(iii) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

(b) Applicability

(A) DEQ may establish site-specific criteria under this rule section only for carcinogenic pollutants.

(B) Site-specific criteria established under this rule section apply in the vicinity of the discharge for purposes of establishing permit limits for the specified permittee.

(C) The underlying waterbody criteria continue to apply for all other Clean Water Act programs.

(D) The site-specific background pollutant criterion will be effective upon DEQ issuance of the permit for the specified permittee.

(E) DEQ will reevaluate any site-specific criteria developed under this procedure upon permit renewal.

(c) DEQ may establish a site-specific background pollutant criterion when all of the following conditions are met:

(A) The discharger has a currently effective NPDES permit;

(B) The mass of the pollutant discharged to the receiving waterbody does not exceed the mass of the intake pollutant from the same body of water, as defined in section (5)(a)(C) above, and therefore does not increase the total mass load of the pollutant in the receiving water body;

(C) DEQ has not assigned the discharger a TMDL wasteload allocation for the pollutant in question;

(D) The permittee uses any feasible pollutant reduction measures available and known to minimize the pollutant concentration in their discharge;

(E) The pollutant discharge has not been chemically or physically altered in a manner that causes adverse water quality impacts that would not occur if the intake pollutants were left in-stream; and,

(F) The timing and location of the pollutant discharge would not cause adverse water quality impacts that would not occur if the intake pollutant were left in-stream.

(d) The site-specific background pollutant criterion must be the most conservative of the following four values. The procedures deriving these values are described in the sections (5)(e) of this rule.

(A) The projected in-stream pollutant concentration resulting from the current discharge concentration and any feasible pollutant reduction measures under (c)(D) above, after mixing with the receiving stream.

(B) The projected in-stream pollutant concentration resulting from the portion of the current discharge concentration associated with the intake pollutant mass after mixing with the receiving stream. This analysis ensures that there will be no increase in the mass of the intake pollutant in the receiving water body as required by condition (c)(B) above.

(C) The projected in-stream pollutant concentration associated with a 3 percent increase above the background pollutant concentration as calculated:

(i) For the main stem Willamette and Columbia Rivers, using 25 percent of the harmonic mean flow of the waterbody.

(ii) For all other waters, using 100 percent of the harmonic mean flow or similar critical flow value of the waterbody.

(D) A criterion concentration value representing a human health risk level of 1 x 10-4. DEQ calculates this value using EPA's human health criteria derivation equation for carcinogens (EPA 2000), a risk level of 1 x 10-4, and the same values for the remaining calculation variables that were used to derive the underlying human health criterion.

(e) Procedure to derive a site-specific human health water quality criterion to address a background pollutant:

(A) DEQ will develop a flow-weighted characterization of the relevant flows and pollutant concentrations of the receiving waterbody, effluent and all facility intake pollutant sources to determine the fate and transport of the pollutant mass.

(i) The pollutant mass in the effluent discharged to a receiving waterbody may not exceed the mass of the intake pollutant from the same body of water.

(ii) Where a facility discharges intake pollutants from multiple sources that originate from the receiving waterbody and from other waterbodies, DEQ will calculate the flow-weighted amount of each source of the pollutant in the characterization.

(iii) Where a municipal water supply system provides intake water for a facility and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration and mass of the intake water pollutant must be determined at the point where the water enters the water supplier's distribution system.

(B) Using the flow weighted characterization developed in section (5)(e)(A), DEQ will calculate the in-stream pollutant concentration following mixing of the discharge into the receiving water. DEQ will use the resultant concentration to determine the conditions in section (5)(d)(A) and (B).

(C) Using the flow-weighted characterization, DEQ will calculate the in-stream pollutant concentration based on an increase of 3 percent above background pollutant concentration. DEQ will use the resultant concentration to determine the condition in Section (5)(d)(C).

(i) For the main stem Willamette and Columbia Rivers, DEQ will use 25 percent of the harmonic mean flow of the waterbody.

(ii) For all other waters, DEQ will use 100 percent of the harmonic mean flow or similar critical flow value of the waterbody.

(D) DEQ will select the most conservative of the following values as the site-specific water quality criterion.

(i) The projected in-stream pollutant concentration described in section (5)(e)(B);

(ii) The in-stream pollutant concentration based on an increase of 3 percent above background described in section (5)(e)(C); or

(iii) A water quality criterion based on a risk level of 1 x 10-4.

(f) Calculation of water quality based effluent limits based on a site-specific background pollutant criterion:

(A) For discharges to receiving waters with a site-specific background pollutant criterion, DEQ will use the site-specific criterion in the calculation of a numeric water quality based effluent limit.

(B) DEQ will compare the calculated water quality based effluent limits to any applicable aquatic toxicity or technology based effluent limits and select the most conservative for inclusion in the permit conditions.

(g) In addition to the water quality based effluent limits described in section (5)(f), DEQ will calculate a mass-based limit where necessary to ensure that the condition described in section (5)(c)(B) is met. Where mass-based limits are included, the permit will specify how DEQ will assess compliance with mass-based effluent limitations.

(h) The permit shall include a provision requiring DEQ to consider the re-opening of the permit and re-evaluation of the site-specific background pollutant criterion if new information shows the discharger no longer meets the conditions described in subsections (5)(c) and (e).

(i) Public Notification Requirements.

(A) If DEQ proposes to grant a site-specific background pollutant criterion, it must provide public notice of the proposal and hold a public hearing. The public notice may be included in the public notification of a draft NPDES permit or other draft regulatory decision that would rely on the criterion and will also be published on DEQ's water quality standards website;

(B) DEQ will publish a list of all site-specific background pollutant criteria approved according to this rule. DEQ will add the criterion to this list within 30 days of its effective date. The list will identify the:

(i) Permittee;

(ii) Site-specific background pollutant criterion and the associated risk level;

(iii) Waterbody to which the criterion applies;

(iv) Allowable pollutant effluent limit; and

(v) How to obtain additional information about the criterion.

(6) Arsenic Reduction Policy: The inorganic arsenic criterion for the protection of human health from the combined consumption of organisms and drinking water is 2.1 micrograms per liter. While this criterion is protective of human health and more stringent than the federal maximum contaminant level (MCL) for arsenic in drinking water, which is 10 micrograms per liter, it is based on a higher risk level than EQC used to establish other human health criteria. This higher risk level recognizes that much of the risk is due to naturally high levels of inorganic arsenic in Oregon's waterbodies. In order to maintain the lowest human health risk from inorganic arsenic in drinking water, EQC determined that it is appropriate to adopt the following policy to limit the human contribution to that risk.

(a) It is EQC policy to reduce the addition of inorganic arsenic from new or existing anthropogenic sources to waters of the state within a surface water drinking water protection area to the maximum amount feasible. The requirements of this rule section (OAR 340-041-0033(6)) apply to sources that discharge to surface waters of the state with an ambient inorganic arsenic concentration equal to or lower than the applicable numeric inorganic arsenic criteria for the protection of human health.

(b) Definitions. As used in this section:

(A) "Add inorganic arsenic" means to discharge a net mass of inorganic arsenic from a point source (the mass of inorganic arsenic discharged minus the mass of inorganic arsenic taken into the facility from a surface water source).

(B) A "surface water drinking water protection area," means an area delineated as such by DEQ under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C. § 300j 13. DEQ delineates these areas to protect public or community drinking water supplies that use surface water sources. These delineations are on DEQ's drinking water program Web page.

(C) "Potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water" means:

(i) a discharge will increase the concentration of inorganic arsenic in the receiving water by 10 percent or more after mixing with the harmonic mean flow of the receiving water; or

(ii) as an alternative, if sufficient data are available, the discharge will increase the concentration of inorganic arsenic in the surface water intake water of a public water system by 0.021 micrograms per liter or more based on a mass balance calculation.

(c) Following the effective date of this rule, applications for an individual NPDES permit or permit renewal received from industrial dischargers located in a surface water drinking water protection area and identified by DEQ as likely to add inorganic arsenic to the receiving water must include sufficient data to enable DEQ to determine whether:

(A) The discharge adds inorganic arsenic; and

(B) The discharge has the potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water.

(d) Where DEQ determines that both conditions in subsection (c) of this section (6) are true, the industrial discharger must develop an inorganic arsenic reduction plan and propose all feasible measures to reduce its inorganic arsenic loading to the receiving water. The proposed plan, including proposed measures, monitoring and reporting requirements, and a schedule for those actions, will be described in the fact sheet and incorporated into the source's NPDES permit after public comment and DEQ review and approval. In developing the plan, the source must:

(A) Identify how much it can minimize its inorganic arsenic discharge through pollution prevention measures, process changes, wastewater treatment, alternative water supply for groundwater users, or other possible pollution prevention and control measures;

(B) Evaluate the costs, feasibility and environmental impacts of the potential inorganic arsenic reduction and control measures;

(C) Estimate the predicted reduction in inorganic arsenic and the reduced human health risk expected to result from the control measures;

(D) Propose specific inorganic arsenic reduction or control measures, if feasible, and an implementation schedule; and

(E) Propose monitoring and reporting requirements to document progress in plan implementation and the inorganic arsenic load reductions.

(e) In order to implement this section, DEQ will develop the following information and guidance within 120 days of the effective date of this rule and periodically update it as warranted by new information:

(A) A list of industrial sources or source categories, including industrial stormwater and sources covered by general permits likely to add inorganic arsenic to surface waters of the state.For industrial sources or source categories permitted under a general permit that have been identified by DEQ as likely sources of inorganic arsenic, DEQ will evaluate options for reducing inorganic arsenic during permit renewal or evaluation of Stormwater Pollution Control Plans.

(B) Quantitation limits for monitoring inorganic arsenic concentrations.

(C) Information and guidance to assist sources in estimating, according to subsection (d)(C) of this section, the reduced human health risk expected to result from inorganic arsenic control measures based on the most current EPA risk assessment.

(f) It is the policy of EQC that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the state or to a location where such material could readily migrate into waters of the state.

NOTE: Tables 30, 31 and 40 are found under OAR 340-041-8033.

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

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

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10; DEQ 8-2011, f. & cert. ef. 6-30-11; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 17-2013, f. 12-23-13, cert. ef. 4-18-14; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0124

Water Quality Standards and Policies Specific to the Main Stem Snake River

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: main stem Snake River: 7.0-9.0.

(2) Total Dissolved Solids. Guide concentration listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0120: main stem Snake River — 750.0 mg/l.

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

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

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0310

Beneficial Uses to Be Protected in the Umatilla Basin

(1) Water quality in the Umatilla Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 310A (January 2015).

(2) Designated fish uses to be protected in the Umatilla Basin are shown in Figures 310A and 310B (November 2003, except as noted in Table 310A).

[ED. NOTE: Tables & figures referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2012, f. & cert. ef. 5-21-12; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-0315
Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: all Basin streams except the main stem Columbia River and the "constructed channel" segment of the West Division Main Canal: 6.5-9.0. When more than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by DEQ, DEQ will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) The following criteria apply to the "constructed channel" segment of the West Division Main Canal and supersede the water quality standards in OAR 340-041-0011 through 340-041-0036 for the "constructed channel" segment of the canal. The criteria in (b) and (c) also apply to the "overflow channels" segment of the West Division Main Canal.

(a) Canal waters may not exceed the numeric criteria shown in Table 315 from the uppermost irrigation withdrawal to the end of the "constructed channel" segment of the canal.

(b) Toxic substances must not be present in canal waters in amounts likely to singularly or in combination harm the designated beneficial uses of the canal or downstream waters.

(c) Sediment load and particulate size shall not exceed levels that interfere with irrigation or the other designated beneficial uses of the canal;

(d) pH values may not fall outside the range of 4.5 to 9.0.

(3) Minimum Design Criteria for Treatment and control of Sewage Wastes in this Basin:

(a) During periods of low stream flows (approximately April 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by DEQ, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07; DEQ 3-2012, f. & cert. ef. 5-21-12; DEQ 1-2015, f. & cert. ef. 1-7-15

340-041-8033
Untitled

(1) Table 30: Aquatic Life Water Quality Criteria for Toxic Pollutants.

(2) Table 31: Aquatic Life Water Quality Guidance Values for Toxic Pollutants.

(3) Table 40: Human Health Water Quality Criteria for Toxic Pollutants.

(4) The tables listed above in this rule are referenced in the water quality standards Toxics Substances Rule under OAR 340-041-0033. See that rule for important information about the applicability and content of these tables.

NOTE: In January 2015, the Environmental Quality Commission adopted revisions to Table 30 that revised the aquatic life freshwater criteria for ammonia. The Table 30 version accessed below reflects the revision to the ammonia criteria including several other clarifications. Revised Table 30 is not applicable for Clean Water Act purposes until EPA approves the revisions.
Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 1-2015, f. & cert. ef. 1-7-15

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Rule Caption: Increase Title V Permit Fees by the Consumer Price Index
Adm. Order No.: DEQ 2-2015
Filed with Sec. of State: 1-7-2015
Certified to be Effective: 1-7-15
Notice Publication Date: 10-1-2014
Rules Amended: 340-220-0030, 340-220-0040, 340-220-0050
Subject: The Environmental Quality Commission adopted rules to increase Title V operating permit fees by the change in the Consumer Price Index as federal and state law authorize. The fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V operating permit program.

The adopted rules will increase fees in invoice year 2015 and are the second rulemaking of two phases. This two-phase approach saved administrative costs because DEQ held a single public notice and comment period for two rulemakings.

Phase one:

DEQ proposed, and the Environmental Quality Commission adopted, phase one rules at the commission's meeting August 2014 meeting. The adopted fee increase was effective for invoice year 2014. The increase was 1.7 percent based on the federal Bureau of Labor Statistics September 2013 CPI for the period Sept. 1, 2012 through Aug. 31, 2013. DEQ applied this CPI to permit fees on the invoices DEQ issued beginning in September 2014 for emission fees and for the operating period Nov. 15, 2014, to Nov. 14, 2015.

Phase two:

DEQ proposed, and the commission adopted, phase two rules at the commission's meeting in January 2015. The fee increase effective for invoice year 2015 is an additional 1.6 percent based on the Bureau of Labor Statistics September 2014 CPI for the period Sept. 1, 2013 through Aug. 31, 2014. DEQ will apply the 2014 CPI to permit fees on the invoices DEQ will issue in August 2015 for 2014 emission fees and for the operating period Nov. 15, 2015, to Nov. 14, 2016.

Background:

Title V of the federal Clean Air Act requires each state to develop and implement a comprehensive operating permit program for major industrial sources of air pollution.

Oregon's Title V program:

- Administers federal health standards, air toxic requirements and other regulations that protect air quality
- Issues, renews or modifies Title V permits to prevent or reduce air pollution through permit requirements
- Completes required Title V inspections
- Ensures that existing sources of air pollution comply with state and federal air emissions standards
- Ensures that new sources of air pollution install controls needed to protect air quality, such as filtration equipment, combustion controls and vapor controls
- Issues public notices and information about the Title V program
- Provides other essential services such as emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA

Regulated parties:

The adopted rules affect facilities that currently have a Title V permit and any facility that applies for this type of permit in the future.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-220-0030
Annual Base Fee

(1) DEQ will assess an annual base fee of $7,787 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2014 to November 14, 2015.

(2) DEQ will assess an annual base fee of $7,910 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2015 to November 14, 2016, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15

340-220-0040
Emission Fee

(1) DEQ will assess an emission fee of $58.88 per ton of each regulated pollutant emitted during calendar year 2013 to each source subject to the Oregon Title V Operating Permit Program.

(2) DEQ will assess an emission fee of $59.81 per ton of each regulated pollutant emitted during calendar year 2014 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(3) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15

340-220-0050
Specific Activity Fees

(1) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of September 1, 2014 to January 6, 2015 as follows:

(a) Existing source permit revisions:
(A) Administrative* — $474;
(B) Simple — $1,899;
(C) Moderate — $14,245;
(D) Complex — $28,491.
(b) Ambient air monitoring review — $3,798.

(2) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source as of January 7, 2015 as follows:

(a) Existing source permit revisions:
(A) Administrative* — $482;
(B) Simple — $1,929;
(C) Moderate — $14,471;
(D) Complex — $28,942.
(b) Ambient air monitoring review — $3,858.

NOTE: *Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

(3) DEQ will assess the following specific activity fee for an Oregon Title V Operating Permit program source for annual greenhouse gas reporting, as required by OAR 340-215-0060(1) —15 percent of the following, not to exceed $4,500:

(a) The applicable annual base fee (for the period of November 15 of the current year to November 14 of the following year); and

(b) The applicable annual emission fee (for emissions during the previous calendar year).

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2011, f. & cert. ef. 7-21-11; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15

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Rule Caption: Clean Fuels Program Phase II
Adm. Order No.: DEQ 3-2015
Filed with Sec. of State: 1-8-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 340-253-0620, 340-253-1050, 340-253-2000, 340-253-2100, 340-253-2200, 340-253-8010, 340-253-8020, 340-253-8050
Rules Amended: 340-253-0000, 340-253-0040, 340-253-0060, 340-253-0100, 340-253-0200, 340-253-0250, 340-253-0310, 340-253-0320, 340-253-0330, 340-253-0340, 340-253-0400, 340-253-0450, 340-253-0500, 340-253-0600, 340-253-0630, 340-253-0650, 340-253-1000, 340-253-1010, 340-253-1020, 340-253-1030
Rules Ren. & Amend: 340-253-3010 to 340-253-8030, 340-253-3020 to 340-253-8040, 340-253-3030 to 340-253-8060, 340-253-3040 to 340-253-8070, 340-253-3050 to 340-253-8080
Subject: SHORT SUMMARY:

The Environmental Quality Commission is amending and adopting Oregon Clean Fuels Program rules under division 253 of chapter 340 of the Oregon Administrative Rules. The phase 2 rules will:

- Implement House Bill 2186 (2009) by establishing clean fuel standards to reduce greenhouse gas emissions from Oregon's transportation fuels by 10 percent over a 10-year period.

- Require importers of transportation fuels to reduce the average carbon intensity of fuels they provide in Oregon to meet the annual clean fuel standards. To meet the standards, regulated parties would select the strategy that works best for them, such as incorporating more lower-carbon biofuels, natural gas, biogas, propane or electricity into its fuel mix, or by purchasing clean fuel credits from providers of clean fuels.

- Allow providers of clean fuels to generate and sell clean fuel credits for the fuels they provide in Oregon.

- Modify the definition of fuel importer to be the owner of the fuel when it crosses into Oregon.

- Establish fuel supply and fuel price deferrals to contain the costs of the program.

BRIEF HISTORY:

The 2009 Oregon Legislature passed House Bill 2186. The bill authorized EQC to adopt rules to reduce lifecycle emissions of greenhouse gases from Oregon's transportation fuels by 10 percent over a 10-year period.

The Department of Environmental Quality's Clean Fuels Program Phase 2 Rules Advisory Committee raised questions about when Oregon must implement the Clean Fuels Program. After consulting with the Oregon Department of Justice, DEQ concluded that EQC has statutory authority to adopt Oregon's implementation schedule to achieve 10 percent reduction in fuel carbon content by the end of any 10 year period. Therefore, DEQ proposes to implement the clean fuels standards in the 2015 to 2025 timeframe.

Oregon started fuels reporting (Phase 1) of the Clean Fuels Program on Jan. 1, 2013, after EQC adopted rules in December 2012. Phase 1 rules required Oregon fuel producers and importers to register, keep records and report the volumes and carbon intensities of the transportation fuels they provide in Oregon.

REGULATED PARTIES:

The Clean Fuels Program regulates Oregon producers and importers of transportation fuels for use in Oregon. The proposed rule defines an importer as the party that owns the transportation fuel when it crosses into Oregon.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-253-0000
Overview

(1) Context. The Oregon Legislature found that climate change poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon. Section 1, chapter 907, Oregon Laws 2007. The Oregon Clean Fuels Program will reduce Oregon's contribution to the global levels of greenhouse gas emissions and the impacts of those emissions in Oregon in concert with other greenhouse gas reduction policies and actions by local governments, other states and the federal government.

(2) Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the amount of lifecycle greenhouse gas emissions per unit of energy by a minimum of 10 percent below 2010 levels over a 10-year period. This reduction goal applies to the average of all transportation fuels used in Oregon, not to individual fuels. A fuel user does not violate the standard by possessing fuel that has higher carbon content than the clean fuel standard allows.

(3) Background. The 2009 Oregon Legislature adopted House Bill 2186 enacted as chapter 754 of Oregon Laws 2009. The law authorizes the Environmental Quality Commission to adopt low carbon fuel standards for

gasoline, diesel fuel and fuels used as substitutes for gasoline or diesel fuel. Sections 6 to 9 of chapter 754, Oregon Laws 2009 is printed as a note following ORS 468A.270 in the 2011 Edition. OAR division 253 of chapter 340 implements section 6 of the law.

(4) Program Review. EQC expects DEQ to periodically review and assess the Oregon Clean Fuels Program and make recommendations to EQC for improvement. DEQ will conduct two periodic reviews between 2015 and 2025. Review and assessment may include:

(a) The program's progress towards meeting its targets;

(b) Adjustments to the compliance schedule, if needed;

(c) The costs and benefits that complying with Clean Fuels Program rules cause for regulated parties and credit generators;

(d) The costs and benefits that complying with Clean Fuels Program rules cause for Oregon fuel consumers and Oregon's economy;

(e) The rate of climate change and the costs of environmental and economic damage due to climate change;

(f) The current and projected availability of clean fuels;

(g) The progress and adoption rates of clean fuels, clean fuel infrastructure and clean fuel vehicles;

(h) Identifying hurdles or barriers to implementing the Clean Fuels Program (e.g., permitting issues, infrastructure adequacy, research funds) and recommendations for addressing such hurdles or barriers;

(i) The mechanisms to provide exemptions and deferrals necessary to mitigate the cost of complying with the program;

(j) The methods to quantify lifecycle direct and indirect emissions from transportation fuels including land use change and other indirect effects;

(k) The latest information on low carbon fuel policies and related legal issues;

(l) The status of federal, state and regional programs that address the carbon content of transportation fuel; and

(m) Whether there are the necessary resources to implement the program.

(5) LRAPA. Notwithstanding Lane Regional Air Pollution Agency authorization in OAR 340-200-0010(3), DEQ administers this division in all areas of the State of Oregon.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0040
Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If this rule and 340-200-0020 define the same term, the definition in this rule applies to this division.

(1) "Actual PADD 5" means Petroleum Administration for Defense District 5, which includes Oregon, Washington, Arizona, Nevada, Hawaii, California and Alaska.

(2) "Bill of lading" means a document issued that lists goods being shipped and specifies the terms of their transport.

(3) "Bio-based" means produced from non-petroleum, biological renewable resources.

(4) "Biodiesel" means a diesel substitute that consists of mono-alkyl esters of long chain fatty acids derived from plant or animal matter that complies with ASTM D6751.

(5) "Biodiesel blend" means a blend of biodiesel with petroleum-based diesel fuel, designated BXX where XX represents the volume percentage of biodiesel fuel in the blend.

(6) "Biogas" means gas, consisting primarily of methane and carbon dioxide, produced by the anaerobic decomposition of organic matter. Biogas cannot be directly injected into natural gas pipelines or combusted in most natural gas-fueled vehicles unless first upgraded to biomethane.

(7) "Biomethane" means refined biogas that has been upgraded to a near-pure methane content product. Biomethane can be directly injected into natural gas pipelines or combusted in natural gas-fueled vehicles.

(8) "Broker" means a person who is not a regulated party or a credit generator and who voluntarily registers to participate in the clean fuels program, described in OAR 340-253-0100(3), to facilitate credit generation and to trade credits with regulated parties, credit generators and other brokers.

(9) "Carbon intensity" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO2e per MJ).

(10) "CFP Online System" means the interactive, secured, internet web-based, clean fuels program electronic data tracking, reporting and compliance system that DEQ developed, manages and operates.

(11) "Clean fuel" means a transportation fuel whose carbon intensity value is lower than the applicable clean fuel standard for gasoline and gasoline substitutes in Table 1 under OAR 340-253-8010 or for diesel and diesel substitutes in Table 2 under OAR 340-253-8020.

(12) "Clean fuel standard" means the annual average carbon intensity a regulated party must comply with, as listed in Table 1 under OAR 340-253-8010 for gasoline and gasoline substitutes and in Table 2 under 340-253-8020 for diesel fuel and diesel substitutes.

(13) "Clear gasoline" means gasoline that has not been blended with a renewable fuel.

(14) "Clear diesel" means diesel that has not been blended with a renewable fuel.

(15) "Compliance period" means a calendar year and is the period of time within which regulated parties must demonstrate compliance under OAR 340-253-0100.

(16) "Compressed natural gas" or "CNG" means natural gas compressed to a pressure greater than ambient pressure.

(17) "Credit" means a unit of measure that is generated when the carbon intensity value of a fuel that is produced, imported, dispensed or used in Oregon is less than the clean fuel standard. Credits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under Table 2 under OAR 340-253-1020.

(18) "Credit generator" means any person eligible to generate credits by providing clean fuels for use in Oregon and who voluntarily registers to participate in the clean fuels program, described in OAR 340-253-0100(2), and specified by fuel type in Tables 1-4 under OAR 340-253-0310 through 340-253-0340.

(19) "Credit transfer document" or "CTD" means an invoice, bill of lading, purchase contract or any other proof of credit ownership transfer.

(20) "Deficit" means a unit of measure that is generated when the carbon intensity value of a fuel that is produced or imported in Oregon exceeds the clean fuel standard. Deficits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under OAR 340-253-1020.

(21) "Diesel fuel" or "diesel" means a compression ignition engine fuel conforming to the specifications of either ASTM D975 or ASTM D7467.

(22) "Diesel substitute" means any fuel, other than diesel fuel, that may be used in an engine designed for diesel use.

(23) "Ethanol," or "Denatured fuel ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D4806 standards that is blended with gasoline for use in a spark-ignition internal combustion engine.

(24) "Export" means to have ownership title to transportation fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(25) "Feedstock" means the material from which a fuel is made.

(26) "Fossil" means derived solely from petroleum or fossil sources such as oil fields and coal beds.

(27) "Fuel type" means any unique fuel feedstock and production process combination.

(28) "Fuel pathway code" means a code that represents a unique fuel type. The fuel pathway code is a field in the CFP Online System used to represent a specific type of fuel that has an assigned carbon intensity value.

(29) "Gasoline" means a spark ignition engine fuel conforming to the specifications defined in ASTM D4814.

(30) "Gasoline substitute" means any fuel, other than gasoline, that may be used in an engine designed for gasoline use.

(31) "Heavy duty motor vehicle" or "HDV" means any motor vehicle rated at more than 10,000 pounds gross vehicle weight.

(32) "Import" means to have ownership title to transportation fuel from locations outside of Oregon at the time it is brought into the State of Oregon by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(33) "Importer" means:

(a) With respect to any liquid fuel, the person who imports the fuel; or

(b) With respect to any biomethane, the person who owns the biomethane when it is trucked into Oregon or injected into a pipeline located outside of Oregon and delivered for use in Oregon.

(34) "Invoice" means the receipt or other record of a sale transaction, specifying the price and terms of sale, that describes an itemized list of goods shipped.

(35) "Large importer" means any person who imports into Oregon more than 250,000 gallons of transportation fuels in a given calendar year.

(36) "Light-duty motor vehicle" or "LDV" means any motor vehicle rated at 8,500 pounds gross vehicle weight or less.

(37) "Lifecycle greenhouse gas emissions" are:

(a) The aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer; and

(c) Stated in terms of mass values for all greenhouse gases as adjusted to CO2e to account for the relative global warming potential of each gas.

(38) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied.

(39) "Liquefied compressed natural gas" or "L-CNG" means natural gas that has been liquefied and transported to a dispensing station where it was then re-gasified and compressed to a pressure greater than ambient pressure.

(40) "Liquefied petroleum gas" or "propane" or "LPG" means a petroleum product composed predominantly of any of the hydrocarbons propane, propylene, normal or iso butane, butylene, or mixtures thereof, maintained in the liquid state.

(41) "Medium duty vehicle" or "MDV" means any motor vehicle rated between 8,501 pounds and 10,000 pounds gross vehicle weight.

(42) "Motor vehicle" has the same meaning as defined under OAR 603-027-0410.

(43) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds with at least 80 percent methane by volume.

(44) "OR-GREET" means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) Argonne National Laboratory model that DEQ modifies and maintains for use in Oregon. DEQ will provide copies of OR-GREET upon request.

(45) "Physical transport mode code" means how a fuel physically enters Oregon. Physical transport mode code is a field in the CFP Online System used to represent how a fuel was imported.

(46) "Producer" means:

(a) With respect to any liquid fuel, the person who makes the fuel in Oregon; or

(b) With respect to any biomethane, the person who refines, treats or otherwise processes biogas into biomethane in Oregon.

(47) "Product transfer document" or "PTD" means a document that conveys information about the transfer of ownership of fuel from a regulated party to the recipient of the fuel.

(48) "Regulated fuel" means a transportation fuel identified under OAR 340-253-0200(2).

(49) "Regulated party" means a person responsible for compliance with the clean fuel standards identified under OAR 340-253-0310.

(50) "Renewable diesel" means diesel fuel derived from vegetable oils, animal fats or other non-petroleum resources.

(51) "Small importer" means any person who imports into Oregon 250,000 gallons or less of transportation fuel in a given calendar year.

(52) "Statutory PADD 5" means the Petroleum Administration for Defense District 5 states: Oregon, Washington, Arizona and Nevada.

(53) "Transaction type" means the nature of the fuel transaction. Transaction type is a field in the CFP Online System used to represent how a volume of fuel should be treated in terms of compliance with the clean fuel standards.

(54) "Transportation fuel" means gasoline, diesel, any other flammable or combustible gas or liquid and electricity that can be used as a fuel for the operation of a motor vehicle. Transportation fuel does not mean unrefined petroleum products.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0060
Acronyms

The following acronyms apply to this division:

(1) "ASTM" means ASTM International (formerly American Society for Testing and Materials).

(2) "BTU" means British thermal unit.

(3) "CFP" means the clean fuels program established under OAR chapter 340, division 253.

(4) "CIE" means compression ignition engine.

(5) "DEQ" means Oregon Department of Environmental Quality.

(6) "EQC" means Oregon Environmental Quality Commission.

(7) "FEIN" means federal employer identification number.

(8) "gCO2e per MJ" means grams of carbon dioxide equivalent per megajoule of energy.

(9) "SIE" means spark ignition engine.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0100
Oregon Clean Fuels Program Applicability and Requirements

(1) Regulated parties. All persons that produce in Oregon or import into Oregon any regulated fuel must comply with the rules in this division. The regulated parties for regulated fuels produced or imported in Oregon are designated under OAR 340-253-0310.

(a) Regulated parties must comply with sections (4) through (8) below; except that:

(b) Small importers are exempt from sections (5) through (8) below.

(2) Credit generators.

(a) The following rules designate persons eligible to generate credits for each fuel type:

(A) OAR 340-253-0320 for compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas and renewable diesel;

(B) OAR 340-253-0330 for electricity; and

(C) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(b) Persons eligible to be credit generators are not required to participate in the program. Persons who choose voluntarily to participate in the program to generate credits must comply with sections (4), (5), (7) and (8) below.

(3) Brokers.

(a) Brokers must comply with this section and sections (4), (5), (7) and (8) below.

(b) Brokers may hold and trade credits. A broker also may generate credits and facilitate credit generation and credit trading if a regulated party, credit generator or person eligible to be a credit generator authorized the broker to act on its behalf.

(4) Registration.

(a) A regulated party must submit a complete registration application to DEQ under OAR 340-253-0500 for each fuel type on or before the date upon which that party begins producing the fuel in Oregon or importing the fuel into Oregon. The registration application must be submitted using DEQ approved forms.

(b) A credit generator must submit a complete registration to DEQ under OAR 340-253-0500 for each fuel type before it may generate credits for fuel produced, imported, dispensed or used in Oregon. DEQ will not recognize credits allegedly generated by any person that does not have an approved, accurate and current registration.

(c) A broker must submit a complete registration to DEQ under OAR 340-253-0500, or modify its existing registration each time it enters into a new contract with a regulated party or credit generator, before trading credits or facilitating credit generation or trading by a regulated party or credit generator. DEQ will not recognize the transfer of credits by a broker that does not have an approved, accurate and current registration.

(d) When DEQ approves the registration application of a regulated party, credit generator or broker under OAR 340-253-0500, the regulated party, credit generator or broker must establish an account in the CFP Online System and must use the CFP Online System to record and report credit and deficit generation, credit trading and compliance with the CFP rules in this division.

(5) Records. Beginning on July 1, 2015, regulated parties, credit generators registered under subsection (4)(b) and brokers registered under subsection (4)(c) must develop and retain all records OAR 340-253-0600 requires.

(6) Clean fuel standards. Each regulated party must comply with the following standards for all transportation fuel it produces in Oregon or imports into Oregon in each compliance period. To demonstrate compliance, regulated parties must use the calculation method OAR 340-253-1030 specifies. Regulated parties may demonstrate compliance in each compliance period either by producing or importing fuel that in the aggregate meets the standard or by obtaining sufficient credits to offset deficits for such fuel produced or imported into Oregon.

(a) Table 1 under OAR 340-253-8010 establishes the Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes; and

(b) Table 2 under OAR 340-253-8020 establishes the Oregon Clean Fuel Standard for Diesel and Diesel Substitutes.

(7) Quarterly progress report. Regulated parties, credit generators and brokers must submit quarterly progress reports under OAR 340-253-0630.

(8) Annual compliance report. Regulated parties, credit generators and brokers must submit annual compliance reports under OAR 340-253-0650.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0200
Regulated and Clean Fuels

(1) Applicability. Producers and importers of transportation fuels listed in this rule, unless exempt under OAR 340-253-0250, are subject to division 253.

(2) Regulated fuels. Regulated fuels mean the following transportation fuels:

(a) Gasoline;

(b) Diesel fuel;

(c) Denatured fuel ethanol;

(d) Biodiesel; and

(e) Any other liquid or non-liquid transportation fuel not listed in section (3) or exempted under OAR 340-253-0250.

(3) Clean fuels. Clean fuels means a transportation fuel with a carbon intensity value lower than the clean fuel standard for gasoline or diesel fuel and their substitutes in Table 1 or 2 under OAR 340-253-8010 or 340-253-8020, as applicable, for that calendar year, such as:

(a) Bio-based compressed natural gas;

(b) Bio-based liquefied compressed natural gas;

(c) Bio-based liquefied natural gas;

(d) Electricity;

(e) Fossil compressed natural gas;

(f) Fossil liquefied compressed natural gas;

(g) Fossil liquefied natural gas;

(h) Hydrogen or a hydrogen blend;

(i) liquefied petroleum gas; and

(j) Renewable diesel.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0250
Exemptions

(1) Exempt fuels. The following fuels are exempt from the list of regulated fuels under OAR 340-253-0200(2):

(a) Fuels used in small volumes: A transportation fuel supplied for use in Oregon if the producer or importer documents that all providers supply an aggregate volume of less than 360,000 gasoline gallon equivalents or diesel gallon equivalents per year.

(b) Small volume fuel producer: A transportation fuel supplied for use in Oregon if the producer documents that:

(A) The producer has an annual production volume of less than 10,000 gasoline gallon equivalents or diesel gallon equivalents per year; or

(B) The producer has an annual production volume of less than 50,000 gasoline gallon equivalents or diesel gallon equivalents and the fuel producer uses the entire volume in motor vehicles the producer uses directly; or

(C) The producer is a research, development or demonstration facility defined under OAR 330-090-0100.

(c) Fuels that are exported for use outside of Oregon.

(2) Exempt fuel uses.

(a) Transportation fuels supplied for use in the following motor vehicles are exempt from the definition of regulated fuels under OAR 340-253-0200:

(A) Aircraft;

(B) Racing activity vehicles defined in ORS 801.404;

(C) Military tactical vehicles and tactical support equipment;

(D) Locomotives;

(E) Ocean-going vessels defined under OAR 856-010-0003, except for vessel under fishery or recreational endorsement under title 46 United States Code, chapter 121;

(F) Motor vehicles registered as farm vehicles as provided in ORS 805.300;

(G) Farm tractors defined in ORS 801.265;

(H) Implements of husbandry defined in ORS 801.310; or

(I) Motor trucks defined in ORS 801.355 if used primarily to transport logs.

(b) To be exempt, the regulated party must document that the fuel was supplied to use in a motor vehicle listed in subsection (2)(a). The documentation must:

(A) Establish that the fuel was sold through a dedicated source to use in one of the specified motor vehicles; or

(B) Be on a fuel transaction basis if the fuel is not sold through a dedicated source.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0310
Regulated Parties: Gasoline, Diesel Fuel, Ethanol and Biodiesel

(1) Regulated party. The regulated party is the producer or importer of the regulated fuel.

(2) Recipient notification requirement. If a regulated party intends to transfer ownership of fuel, it is the recipient's responsibility to notify the transferor whether the recipient is a producer, a large importer, a small importer or not an importer.

(3) Recipient is a large importer. If a regulated party transfers the fuel to a large importer, the transferor and the recipient have the options and responsibilities under this section.

(a) Unless the transferor elects to remain the regulated party under (3)(b):

(A) The recipient is now the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for the fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate:

(i) Transferor company name, address and contact information;

(ii) Recipient company name, address and contact information;

(iii) Date of transfer;

(iv) Fuel pathway code and carbon intensity value;

(v) Volume/amount;

(vi) A statement that the recipient is now the regulated party; and

(vii) The EPA fuel production company ID and facility ID, if available.

(C) The transferor is no longer the regulated party for such fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

(b) The transferor may elect to remain the regulated party for the transferred fuel. If the transferor elects to remain the regulated party:

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate:

(i) Transferor company name, address and contact information;

(ii) Recipient company name, address and contact information;

(iii) Date of transfer;

(iv) Amount; and

(v) A statement that the transferor remains the regulated party.

(C) The recipient is not the regulated party, except for maintaining the product transfer documentation under OAR 340-253-0600.

(4) Recipient is a producer, a small importer or is not an importer. If a regulated party transfers the fuel to a producer, a small importer or a person who is not an importer, the transferor and the recipient have the options and responsibilities under this section.

(a) Unless the recipient and the transferor agree the recipient is the regulated party under subsection (4)(b):

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate:

(i) Transferor company name, address and contact information;

(ii) Recipient company name, address and contact information;

(iii) Date of transfer;

(iv) Amount; and

(v) A statement that the transferor remains the regulated party.

(C) The recipient is not the regulated party, except for maintaining the product transfer documentation under OAR 340-253-0600.

(b) The recipient may elect to be the regulated party for the transferred fuel. If the recipient elects to be the regulated party:

(A) The recipient is the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate:

(i) Transferor company name, address and contact information;

(ii) Recipient company name, address and contact information;

(iii) Date of transfer;

(iv) Fuel pathway code and carbon intensity value;

(v) Volume/amount;

(vi) A statement that the recipient is now the regulated party; and

(vii) The EPA fuel production company ID and facility ID, if available.

(C) The transferor is not the regulated party, except for maintaining the product transfer documentation under OAR 340-253-0600.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0320
Credit Generators: Compressed Natural Gas, Liquefied Natural Gas, Liquefied Compressed Natural Gas, Liquefied Petroleum Gas and Renewable Diesel

(1) Applicability. This rule applies to providers of compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas and renewable diesel for use as a transportation fuel in Oregon.

(2) Compressed natural gas. For CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil CNG. For fuel that is solely fossil CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based CNG. For fuel that is solely bio-based CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil CNG and bio-based CNG. For fuel that is a blend of fossil CNG and bio-based CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil CNG and bio-based CNG in the blend.

(3) Liquefied natural gas. For LNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil LNG. For fuel that is solely fossil LNG, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based LNG. For fuel that is solely bio-based LNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil LNG and bio-based LNG. For fuel that is a blend of fossil LNG and bio-based LNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil LNG and bio-based LNG in the blend.

(4) Liquefied compressed natural gas. For L-CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil L-CNG. For fuel that is solely fossil L-CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based L-CNG. For fuel that is solely bio-based L-CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil L-CNG and bio-based L-CNG. For fuel that is a blend of fossil L-CNG and bio-based L-CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil L-CNG and bio-based L-CNG in the blend.

(5) Liquefied petroleum gas. For propane used as a transportation fuel, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use in a motor vehicle.

(6) Renewable diesel. For renewable diesel used as a transportation fuel, the person that is eligible to generate credits is the producer or importer of the fuel.

(7) Responsibilities to generate credits. Any person specified in sections (2) through (5) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0330
Credit Generators: Electricity

(1) Applicability. This rule applies to providers of electricity used as a transportation fuel.

(2) For residential charging. For electricity used to charge a motor vehicle in a residence, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Electric Utility. By October 1 of the current year, an electric utility that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 may generate credits for the following calendar year.

(b) Broker. If an electric utility does not register as the credit generator under subsection (a), then a broker may register to generate credits.

(c) Owner of electric-charging equipment. If an electric utility or a broker does not register as the credit generator under subsection (a) or (b), then the owner of the electric-charging equipment may register to generate credits.

(3) For non-residential charging. For electricity used to charge a motor vehicle in non-residential settings, such as at publicly available charging stations, for a fleet, or at a workplace, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or operator of electric-charging equipment. The owner or operator of the electric-charging equipment that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 by September 1 of the current year may generate credits for the following calendar year.

(b) Electric utility. If the owner or operator of the electric-charging equipment does not register as the credit generator under subsection (a), then an electric utility may generate credits if, by October 1, the electric utility has registered or has submitted a complete registration to DEQ under OAR 340-253-0500.

(c) Broker. If the owner or operator of the electric-charging equipment and the electric utility do not register as the credit generator under subsections (a) or (b), then a broker may generate credits if it has provided documentation to DEQ that it has an agreement with the owner or operator of the electric-charging equipment where electric vehicles are charged with transportation fuel.

(4) Responsibilities to generate credits. Any person specified under sections (2) or (3) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

(5) Ceasing to generate credits. Any person that is registered to generate credits under OAR 340-253-0500 must notify DEQ in writing when it no longer intends to generate credits.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0340
Credit Generators: Hydrogen Fuel or a Hydrogen Blend

(1) Applicability. This rule applies to providers of hydrogen fuel and a hydrogen blend for use as a transportation fuel in Oregon.

(2) Credit generation. For a hydrogen fuel or a hydrogen blend, the person who owns the finished hydrogen fuel where the fuel is dispensed for use into a motor vehicle is eligible to generate credits.

(3) Responsibilities to generate credits. Any person specified in section (2) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0400
Fuel Carbon Intensity Values

(1) Statewide carbon intensity values.

(a) Regulated parties, credit generators and brokers must use the statewide average carbon intensity values in Table 3 or 4 under OAR 340-253-8030 or 8040, as applicable, for the following fuels:

(A) Gasoline;

(B) Diesel fuel;

(C) Fossil compressed natural gas;

(D) Fossil liquefied natural gas;

(E) Liquefied petroleum gas; and

(F) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and chooses to obtain a different carbon intensity value.

(b) For electricity, credit generators and brokers may obtain a carbon intensity value different from the statewide average carbon intensity value by following the procedures under section (3), if the electricity provider:

(A) Is exempt from the definition of public utility under ORS 757.005 (1)(b)(G), and is not regulated by the Oregon Public Utility Commission; or

(B) Generates lower carbon electricity at the same location as it is dispensed into a vehicle.

(2) Carbon intensity values for established pathways. Except as provided in section (3), regulated parties, credit generators and brokers must use the carbon intensity value for each transportation fuel that best matches the description in the fuel pathway in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable, and as approved through the registration process under 340-253-0500.

(3) Individual carbon intensity values.

(a) Directed by DEQ. A regulated party, credit generator or broker must obtain and use an individual carbon intensity value for a fuel if DEQ:

(A) Determines the fuel's carbon intensity is not adequately represented by any of the carbon intensity values for established pathways in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable; and

(B) Directs the regulated party, credit generator or broker to obtain an individual carbon intensity value under OAR 340-253-0450.

(b) Election of the party. A regulated party, credit generator or broker may obtain and use an individual carbon intensity value for a fuel if:

(A) It applies for and obtains DEQ approval under OAR 340-253-0450; and

(B) The fuel's carbon intensity value differs from the carbon intensity value for the most similar fuel pathway in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable, by at least 5.0 gCO2e per MJ or 10 percent, whichever is less.

(c) New fuel or feedstock. A regulated party, credit generator or broker must obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any fuel not included in Table 3 or 4 under 340-253-8030 or 340-253-8040, as applicable, and for any fuel made from a feedstock not represented in a carbon intensity value in Table 3 or Table 4 under 340-253-8030 or 340-253-8040, as applicable. A regulated party, credit generator or broker must notify DEQ by submitting a modification to the original registration within 30 days of providing a new transportation fuel for use in Oregon.

(d) Process change notification. If a fuel's carbon intensity value changes due to a change in refining process in a way that increases the fuel's carbon intensity value by more than either 5.0 gCO2e per MJ or 10 percent, whichever is less, the regulated party, credit generator or broker must notify DEQ and obtain an individual carbon intensity value under OAR 340-253-0450 by submitting a modification to the original registration under 340-253-0500 within 30 days after the refining process changes.

(e) OR-GREET. Regulated parties, credit generators and brokers must calculate all carbon intensity values using the approved version of OR-GREET, or a DEQ-approved comparable model for any fuel that cannot be modeled with OR-GREET. Any variations from the approved version of OR-GREET must be documented as described under OAR 340-253-0450(1) and submitted to DEQ for approval.

(4) DEQ review of carbon intensity values. Every three years, or sooner if DEQ determines that new information becomes available that warrants an earlier review, DEQ will review the carbon intensity values in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040 and:

(a) Must consider, at a minimum:

(A) The sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions and energy sources;

(B) The sources of natural gas and associated factors that affect emissions such as extraction technologies, capture of fugitive emissions and energy sources;

(C) The statewide mix of electricity used in Oregon;

(D) Individual carbon intensity values that have been approved under OAR 340-253-0450;

(E) Changes to OR-GREET;

(F) New methods to calculate lifecycle greenhouse gas emissions;

(G) Changes in quantifying indirect land use change; and

(H) Changes in quantifying indirect effects.

(b) Report to EQC regarding whether statewide average carbon intensity values in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040 should be revised. Changes to Table 3 or 4 under 340-253-8030 or 340-253-8040 may only be revised through a rulemaking.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0450
Approval for Individual Carbon Intensity Values

(1) Individual carbon intensity value approval. A regulated party, credit generator or broker may not use an individual carbon intensity value without written DEQ approval under this rule. Individual carbon intensity values are not available for the fuels listed under OAR 340-253-0400(1)(a).

(a) OR-GREET modifications. To obtain an individual carbon intensity value, a regulated party, credit generator or broker may propose a modification to inputs into OR-GREET that more accurately reflect the specific characteristics of the fuel or changes to OR-GREET itself that will result in a more accurate calculation of the carbon intensity value for a fuel. The proposal for an individual carbon intensity value must include:

(A) Inputs used to generate the carbon intensity values under OAR 340-253-0400; and

(B) All modified parameters used to generate the new fuel carbon intensity value.

(b) Other modifications. To obtain an individual carbon intensity value, a regulated party, credit generator or broker may propose modifications based on any new information to calculate lifecycle greenhouse gas emissions. The proposal for an individual carbon intensity value must include:

(A) Inputs used to generate the carbon intensity values under OAR 340-253-0400; and

(B) All parameters used to generate the new fuel carbon intensity value.

(2) Reliability. The regulated party, credit generator or broker must supply documentation necessary for DEQ to determine that the method used to calculate the individual carbon intensity value is reliable and comparable to OR-GREET.

(3) Modification submittal. The regulated party, credit generator or broker must submit proposed modifications under this rule electronically and must include:

(a) Documentation that the proposed pathway has been approved by the California Air Resources Board, if available;

(b) A description of all modifications required by section (1);

(c) Supporting data and calculations; and

(d) Any other information the party would like to submit or DEQ requests to verify the method for calculating the proposed, individual carbon intensity value.

(4) Review process. Within 15 workdays after receiving any modification proposal submitted under section (3), DEQ will determine whether the proposal is complete.

(a) If DEQ determines the proposal is incomplete, DEQ will notify the regulated party, credit generator or broker and identify the deficiencies. If the party submits supplemental information, DEQ has 15 workdays to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies.

(b) If DEQ determines the proposal is complete, DEQ will:

(A) Publish the application on the Oregon Clean Fuels Program website; and

(B) Approve or deny an individual carbon intensity value.

(5) DEQ approval. A regulated party, credit generator or broker may use an individual carbon intensity value upon receiving written approval from DEQ. DEQ will propose to incorporate all associated parameters and fuel-related information of a DEQ-approved individual carbon intensity value into Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable, in a future rulemaking.

(6) DEQ denial. If DEQ determines the proposal for an individual carbon intensity value is not adequately documented, DEQ will deny the modification proposal, identify the basis for the denial, and notify the party which carbon intensity value it is authorized to use for the fuel.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0500
Registration

(1) Registration information. To register, regulated parties, credit generators and brokers must submit the following to DEQ using DEQ-approved forms:

(a) Company identification, including physical and mailing addresses, phone numbers, e-mail addresses, and contact names;

(b) The CFP status of the registrant as a producer, small importer, large importer, credit generator or broker;

(c) For each transportation fuel that will be produced, imported, dispensed or used in Oregon, as applicable:

(A) The proposed carbon intensity value for each fuel. The proposed carbon intensity value must be:

(i) A statewide carbon intensity value for any fuel listed under OAR 340-253-0400(1);

(ii) An individual carbon intensity value listed under Table 3 or 4 under OAR 340-253-8030 or 340-253-8040; or

(iii) An individual carbon intensity approved by DEQ, or a proposal to obtain a new individual carbon intensity value, under OAR 340-253-0400(3).

(B) For a biofuel, its EPA production company ID and facility ID;

(C) The physical transport mode that represents how the fuel will enter Oregon.

(d) Other information requested by DEQ related to registration.

(2) Completeness of submittal. DEQ will review the information submitted under section (1) to determine if the submission is complete.

(a) If DEQ determines the submission is incomplete, DEQ will notify the registrant of the information needed to complete the submission. The registrant must provide the requested information within 30 calendar days from the date on the request.

(b) If DEQ determines the submission is complete, DEQ will notify the party in writing of the completeness determination.

(c) If DEQ does not notify the party in writing of the completeness determination within 30 calendar days of receipt of the registration application, the application is deemed complete.

(3) Approval of carbon intensity values. DEQ will review proposed carbon intensity values to determine if they are accurate.

(a) DEQ will review proposed carbon intensity values as follows:

(A) For a proposed carbon intensity value listed under Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable, DEQ will review whether the fuel type accurately matches the fuel pathway description of the proposed carbon intensity value listed.

(B) For a proposed individual carbon intensity value, DEQ will review the proposal as provided under OAR 340-253-0450.

(b) If DEQ determines that the proposed carbon intensity values accurately reflect the carbon intensity of the fuel types, DEQ will approve the proposed values. Approval of carbon intensity values is confirmed in the registration approval under section (4).

(c) If DEQ determines that a different carbon intensity value more accurately reflects the information submitted, DEQ will notify the regulated party, credit generator or broker of its determination including DEQ's proposed carbon intensity value and the reason(s) for selecting it within 45 days of DEQ's completeness determination.

(A) The registrant must accept or appeal DEQ's determination in writing within 15 days of receiving DEQ's carbon intensity value determination.

(B) If the registrant accepts DEQ's determination, then confirmation will be through the registration approval under section (4) of this rule.

(C) If the registrant appeals DEQ's determination, then it must submit additional supporting information to DEQ within 30 days of its appeal notification. DEQ will review the additional information as provided in this section for review of initial submissions of carbon intensity values. If DEQ already reviewed one appeal of its carbon intensity determination under this section, DEQ may inform the regulated party, credit generator or broker that DEQ's decision is final and it will not undertake further review.

(4) Registration approval. Once DEQ approves the carbon intensity values, DEQ will notify the registrant in writing of its registration approval. The notification will include confirmation of the carbon intensity value for each fuel to be used in calculating credits and deficits under OAR 340-253-1000.

(5) Modifications to registration.

(a) The registrant must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1).

(b) DEQ may require a registrant to submit an amended registration based on new information DEQ receives.

(c) If a registrant amends its registration under this section, the registrant must also update the registrant's account in the CFP Online System to accurately reflect the amended information, as appropriate.

(6) Opting out. To opt-out of the CFP, a credit generator or broker must notify DEQ in writing. A credit generator or broker that opts out cannot generate, trade, or facilitate the generation or trading of credits unless the credit generator or broker re-registers under OAR 340-253-0100(3) or (4). Regulated parties may not opt-out of the CFP.

(7) Registering as a user in the CFP Online System. After DEQ provides initial written approval of the registration application of a regulated party, credit generator or broker, the regulated party, credit generator or broker must establish an account in the CFP Online System and must use the CFP Online System to record and report credit and deficit generation, credit trading and compliance with the rules in this division.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0600
Records

(1) Records. Regulated parties, credit generators and brokers must retain the following records for at least 5 years:

(a) Product transfer documents;

(b) Credit transfer documents;

(c) Copies of all data and reports submitted to DEQ;

(d) Records related to each fuel transaction; and

(e) Records used for compliance or credit calculations.

(2) Review. All data, records, and calculations used by a regulated party, a credit generator or a broker to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. Regulated parties, credit generators and brokers must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless DEQ specifies otherwise.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0620
CFP Online System Reporting

(1) Online reporting. Regulated parties, credit generators and brokers must use the CFP Online System to submit quarterly progress reports under OAR 340-253-0630 and annual compliance reports under OAR 340-253-0650.

(2) Establishing an account. Following DEQ's approval of the regulated party's, credit generator's or broker's registration under OAR 340-253-0500, such person must establish an account in the CFP Online System. Such person must include the following information to register as a user in the CFP Online System:

(a) User's name, address, state and county, date and place of incorporation, and federal employer identification number (FEIN);

(b) User's primary contact name, business and mobile phone numbers, email address, username and password;

(c) Name and title of an Administrator;

(d) Name and title of Contributors, optional;

(e) Name and title of Reviewers, optional; and

(f) Any other information DEQ may require in the CFP Online System.

(3) Account management roles.

(a) Administrator:

(A) Authorized to sign for the user;

(B) Responsible for submitting quarterly progress and annual compliance reports;

(C) Makes changes to the company profile; and

(D) May designate users within the company who can review and upload data, but not submit reports.

(b) Contributor:

(A) Authorized to submit quarterly progress and annual compliance reports, if given signature authority; but

(B) Cannot make changes to the company profile.

(c) Reviewer:

(A) Provided read-only access; but

(B) Cannot submit quarterly progress and annual compliance reports.

(4) Signature. Reports must include an electronic signature that certifies that the submitted information is true, accurate and complete.

(5) Correcting a previously submitted report. A regulated party, credit generator or broker may request to have a previously submitted quarterly progress or annual compliance report reopened for corrective edits and re-submittal. The requestor must submit an "Unlock Report Request Form" using the CFP Online System. The requestor is required to provide justification for the report corrections and indicate the specific corrections to be made to the report. Each submitted request is subject to DEQ approval. DEQ approval of a corrected a report does not preclude DEQ enforcement based on misreporting.

(6) Information exempt from disclosure. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to the Department is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Oregon public records law, ORS 192.410 through 192.505 or other applicable Oregon law.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0630
Quarterly Progress Reports

(1) Quarterly progress reports. Each quarter, regulated parties, credit generators and brokers must submit a progress report using the CFP Online System by no later than:

(a) May 31 — for January through March of each year;

(b) August 31 — for April through June of each year;

(c) November 30 — for July through September of each year; and

(d) February 28 — for October through December of each previous year.

(2) General reporting requirements for quarterly progress reports. Regulated parties, credit generators and brokers must submit quarterly progress reports that contain the information specified in Table 5 under OAR 340-253-8050 for each transportation fuel subject to the CFP.

(3) Specific reporting parameters for biomethane (including bio-based CNG, bio-based LNG and bio-based L-CNG) used as a transportation fuel. The credit generator must report:

(a) The information specified for CNG and LNG in Table 5 under OAR 340-253-8050;

(b) The carbon intensity value of the bio-based CNG, bio-based LNG or bio-based L-CNG as approved under OAR 340-253-0500(4); and

(c) The EPA production company ID and facility ID.

(4) Specific reporting parameters for electricity used as a transportation fuel. For electricity used as a transportation fuel, a credit generator must report the following:

(a) The information specified for electricity in Table 5 under OAR 340-253-8050;

(b) The carbon intensity value of the electricity as approved under OAR 340-253-0500(4); and

(c) For residential charging stations, the total electricity dispensed (in kilowatt hours) to all vehicles at each residence, measured by:

(A) The use of direct metering (either sub-metering or separate metering) to measure the electricity directly dispensed to all vehicles at each household or residence; or

(B) For households and residences where direct metering is not available and with prior DEQ approval, the credit generator may report the total electricity dispensed as a transportation fuel using an alternative method that the credit generator demonstrates is substantially similar to the use of direct metering.

(d) For each public access, fleet and workplace private access charging facility, the amount of electricity dispensed (in kilowatt hours).

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-0650
Annual Compliance Reports

(1) Annual compliance reports. Using the CFP Online System, regulated parties, credit generators and brokers must submit an annual compliance report to DEQ not later than April 30 for the compliance period running from January 1 through December 31 of the previous year.

(2) General reporting requirements for annual compliance reports. Regulated parties, credit generators and brokers must submit annual compliance reports that meet, at minimum, the general and specific requirements for quarterly progress reports and include the following information:

(a) The total credits and deficits generated by the regulated party, credit generator or broker in the current compliance period, calculated in the CFP Online System;

(b) Any credits carried over from the previous compliance period;

(c) Any deficits carried over by a regulated party from the previous compliance period;

(d) The total credits acquired from other regulated parties, credit generators and brokers;

(e) The total credits transferred to other regulated parties, credit generators and brokers; and

(f) The total credits retired by a regulated party to meet the regulated party's compliance obligation.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-1000
Credit and Deficit Basics

(1) Carbon intensity values.

(a) Except as provided in subsection (b), when calculating carbon intensity values, regulated parties, credit generators and brokers must:

(A) Use a DEQ carbon intensity value approved under OAR 340-253-0500(4); and

(B) Express the carbon intensity value to the same number of significant figures as shown in Table 3 or 4 under OAR 340-253-8030 or 340-253-8040, as applicable.

(b) If a regulated party, credit generator or broker has submitted a complete registration under OAR 340-253-0500 and DEQ has not approved the proposed carbon intensity value or has not determined that a different carbon intensity value more accurately reflects the fuel type, the regulated party, credit generator or broker must use the carbon intensity value proposed in its registration.

(2) Fuel quantities. Regulated parties, credit generators and brokers must express fuel quantities to the nearest whole unit applicable for each fuel such as gallons, standard cubic feet, kilowatt-hours or pounds.

(3) Conversion of energy. To convert other energy units to megajoules, the regulated party, credit generator or broker must multiply the unit by the corresponding energy density factor based on the lower heating values of fuels in OR-GREET using BTU to megajoules conversion of 1,055 J per BTU. Table 6 under OAR 340-253-8060 includes energy density conversions for Oregon.

(4) Metric tons of CO2 equivalent. Regulated parties, credit generators and brokers must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(5) Credit generation. A clean fuel credit is generated when fuel is produced, imported, dispensed or used in Oregon, as applicable, and the carbon intensity value of the fuel approved under OAR 340-253-0500(4) is less than the clean fuel standard for gasoline or diesel fuel and their substitutes in Table 1 or 2 under 340-253-8010 or 340-253-8020, as applicable.

(6) Deficit generation. A clean fuel deficit is generated when fuel is produced, imported, dispensed or used in Oregon, as applicable, and the carbon intensity value of the fuel approved under OAR 340-253-0500(4) is more than the clean fuel standard for gasoline or diesel fuel and their substitutes in Table 1 or 2 under 340-253-8010 or 340-253-8020, as applicable.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-1010
Fuels to Include in Credit and Deficit Calculation

(1) Fuels included. Regulated parties, credit generators and brokers must calculate credits or deficits for all regulated fuels and clean fuels.

(2) Fuels exempted. Except as provided in section (3), regulated parties, credit generators and brokers may not calculate credits and deficits for fuels:

(a) Exported outside Oregon; or

(b) Exempt under OAR 340-253-0250.

(3) Voluntary inclusion. A regulated party, credit generator or broker may choose to include in its credits and deficits calculations fuel that is exempt under OAR 340-253-0250(1) or sold to an exempt user under 340-253-0250(2) provided that all fuel listed on the same delivery invoice is included.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-1020
Calculating Credits and Deficits

Regulated parties, credit generators and brokers must calculate credits or deficits for each fuel included under 340-253-1010 by:

(1) Using credit and deficit basics as OAR 340-253-1000 specifies;

(2) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8060;

(3) Calculating the adjusted energy in megajoules by multiplying the energy in megajoules from section (2) by the energy economy ratio of the fuel using Table 7 or 8 under OAR 340-253-8070 or 340-253-8080, as applicable;

(4) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity value as approved under OAR 340-253-0500(4) from the clean fuel standard for gasoline or diesel fuel and their substitutes in Table 1 or 2 under 340-253-8010 or 340-253-8020, as applicable;

(5) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(6) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent in section (5) by 1,000,000; and

(7) Determining under OAR 340-253-1000(5) and (6) whether credits or deficits are generated.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-1030
Net Balance Calculation Deficits

(1) Small deficits. At the end of a compliance period, a regulated party that has a net deficit balance may carry forward a small deficit to the next compliance period without penalty if the regulated party does not have any credits to offset its deficits. A small deficit exists if the amount of credits the regulated party needs to meet the standard is 10 percent or less than the total amount of deficits the regulated party generated for the compliance period.

(2) Large deficits. At the end of a compliance period, a regulated party that has a net deficit balance may not carry forward a large deficit to the next compliance period. A large deficit exists if the amount of credits the regulated party needs to meet the standard is greater than 10 percent of the total amount of deficits the regulated party generated for the compliance period. A regulated party violates this rule if that party has a large deficit at the end of a compliance period.

(3) Deficit reconciliation. If a regulated party carries a small deficit forward from the previous compliance period, the regulated party must eliminate the small deficit by the end of the current compliance period. This provision does not preclude the regulated party from carrying forward a small deficit in the subsequent compliance period based on the total amount of deficits the regulated party generated in the subsequent compliance period.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-1050
Credit Basics

(1) General.

(a) Clean fuel credits are a regulatory instrument and do not constitute personal property, instruments, securities or any other form of property.

(b) Regulated parties, credit generators and brokers may:

(A) Retain clean fuel credits without expiration for use within the CFP, subject to this rule and OAR 340-253-1030; and

(B) Acquire or transfer clean fuel credits from or to other regulated parties, credit generators and brokers that are approved program users under OAR 340-253-0500(4) and have account access to the CFP Online System.

(c) Regulated parties, credit generators and brokers may not:

(A) Use alleged credits that have not been generated in compliance with the rules in this division; or

(B) Borrow or use anticipated credits from future projected or planned carbon intensity reductions.

(2) Mandatory retirement of credits.

(a) At the end of a compliance period, a regulated party that possesses credits must retire a sufficient number of credits to satisfy the regulated party's compliance obligation for that compliance period. A regulated party may not carry over credits to the next compliance period if the regulated party has any remaining deficits.

(b) At the end of a compliance period, if the total number of credits is less than the total number of deficits, the regulated party is subject to OAR 340-253-1030.

(3) Credit transfers between parties.

(a) "Credit seller," as used in this rule, means a regulated party, credit generator or broker who wishes to sell or transfer credits.

(b) "Credit buyer," as used in this rule, means a regulated party, credit generator or broker who wishes to acquire credits.

(c) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(d) A credit seller may only transfer credits up to the number of total credits in the credit seller's CFP Online System account.

(4) Credit transfer form.

(a) When parties intend to enter in to a credit transfer agreement, the credit seller must use the "Credit Transfer Form" provided in the CFP Online System and must include the following:

(A) Date of the proposed credit transfer agreement;

(B) Name and FEIN of the credit seller and credit buyer;

(C) Name and contact information of the person who performed the transaction on the credit seller's and credit buyer's behalf;

(D) The number of credits proposed to be transferred; and

(E) The price or equivalent value of the consideration (in US dollars) to be paid per metric ton of credit proposed for transfer, excluding any fees.

(b) After receiving the credit transfer form from the credit seller, the credit buyer must confirm the accuracy of the information contained in the credit transfer form using the CFP Online System.

(5) Broker. A credit seller or a credit buyer may elect to use a broker to facilitate the transfer of credits but may only use a broker who complies with this rule. A broker may only facilitate the transfer of credits if that broker:

(a) Has an approved and active registration under OAR 340-253-0500(4);

(b) Has an account on the CFP Online System; and

(c) Complies with OAR 340-253-0100(4).

(6) Illegitimate credits.

(a) A credit generator violates these rules if it submits information into the CFP Online System indicating that one or more credits have been generated when such an assertion is inconsistent with the requirements of OAR 340-253-1000 through 340-253-1020. If DEQ determines that one or more clean fuel credits a credit generator claims to have generated was not generated in compliance with these rules, then the credit generator:

(A) Must provide an approved clean fuel credit to replace each credit that was not properly generated, if available; and

(B) Is also subject to enforcement for the violation.

(b) A regulated party, credit generator or broker that has acquired one or more illegitimate credits is subject to enforcement unless DEQ determines:

(A) The credits were acquired from a registered regulated party, credit generator or broker with a CFP Online System account; and

(B) The carbon intensity value of the fuel for which the credits were generated matches the carbon intensity value approved by DEQ for that fuel pathway.

(7) Public disclosure.

(a) List of DEQ-approved registered parties. DEQ will maintain a current list of regulated parties, credit generators and brokers that have had their registrations approved by DEQ under OAR 340-253-0500(4) and will make that list available on-line. The list will include, at a minimum, the

name of the regulated party, credit generator or broker and whether the regulated party is a large importer, a small importer or a producer.

(b) Clean Fuels Program status report. DEQ will publish a quarterly report that summarizes the aggregate CFP credit and deficit generation for the:

(A) Most recent quarter;

(B) Past quarters of the current compliance period; and

(C) Past annual compliance periods.

(c) Clean Fuels Program credit report. DEQ will publish a monthly report that summarizes the aggregate CFP credit transfer information for:

(A) Most recent month;

(B) Past months of the current compliance period; and

(C) Past annual compliance periods.

(d) DEQ reports will be based on information submitted into the CFP Online System.

(e) DEQ reports will represent information aggregated for all fuel transacted within the state; not by individual parties.

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-2000
Emergency Deferral Due to Clean Fuel Supply

(1) Determining whether to issue an emergency deferral. DEQ will issue an order declaring an emergency deferral from the clean fuel standard, if DEQ determines:

(a) There is a shortage of fuel that is needed for regulated parties to comply with the clean fuel standard, due to:

(A) A natural disaster; or

(B) An unanticipated disruption in production or transportation of clean fuels used for compliance, except disruptions for routine maintenance of a fuel production facility or fuel transmission system; and

(b) The magnitude of the shortage is greater than the equivalent of five percent of the total credits generated by all regulated parties and providers of clean fuels under OAR 340-253-1020 in the previous compliance period. To determine the magnitude of the shortage, DEQ will consider the following:

(A) The volume and carbon intensity of the fuel determined to be not available under subsection (1)(a);

(B) The estimated duration of the shortage;

(C) Whether one of the following options could mitigate compliance with the clean fuel standard:

(i) The same fuel from other sources is available;

(ii) Substitutes for the affected fuel and the carbon intensity values of those substitutes are available; or

(iii) Banked clean fuel credits are available; and

(D) Any other information DEQ may need to determine the magnitude of the shortage.

(2) Content of an emergency deferral. If DEQ determines under section (1) that it must issue a deferral, then DEQ will determine:

(a) The start date and end date of the emergency deferral period, which may not exceed one year (but which may be renewed if DEQ makes a subsequent determination under section (1);

(b) The fuel deferred from complying with the clean fuel standard; and

(c) Which of the following methods DEQ selects to defer compliance with the clean fuel standard during the temporary deferral period:

(A) Allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(2) and 340-253-1030(3); or

(B) Suspending deficit accrual during the emergency deferral period.

(d) Credits will accrue during the emergency deferral period.

(3) Issuing an emergency deferral. An emergency deferral order DEQ issues under this rule must notify the affected parties and must contain at least the following information:

(a) DEQ's determination under section (1);

(b) The deferral period as established under section (2);

(c) The fuel deferred as established under section (2); and

(d) The method selected by DEQ to comply as established under section (2).

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-2100
Forecasted Deferral Due to Clean Fuel Supply

(1) DEQ forecast. DEQ will use available data under section (2) to develop a fuel supply forecast for the next calendar year that includes:

(a) The potential volumes of gasoline substitutes and diesel fuel substitutes available in Oregon;

(b) The estimated total aggregate credits available;

(c) The estimated credits needed to meet the clean fuel standard; and

(d) A comparison of the estimates under subsections (1)(a) and (b) with (1)(c) to indicate the availability of fuel needed for compliance.

(2) Available data. DEQ will consider available data to develop the forecast including:

(a) Past Oregon fuel consumption volumes and trends;

(b) Oregon and nationwide trends in alternative fuel use;

(c) Information on numbers of alternative-fueled vehicles in Oregon;

(d) Banked clean fuel credits;

(e) Projected total transportation fuel consumption volumes in Oregon, including gasoline and diesel fuel;

(f) Planned projects in or near Oregon such as electric vehicle charging or natural gas fueling stations;

(g) The status of existing and planned clean fuel production facilities nationwide;

(h) Applicable updates to the carbon intensity values of fuels;

(i) Nationwide volumes for fuels required under the federal renewable fuel standard; and

(j) Any other information DEQ may need to develop the forecast.

(3) Determining whether to issue a forecasted deferral. If DEQ forecasts a shortfall in clean fuel credits under subsection (1)(d), and the shortfall is greater than the equivalent of five percent of the credits needed under (1)(c) to comply with the clean fuel standard, then DEQ will determine whether a forecasted deferral is needed by considering the following:

(a) Timing of fuel availability;

(b) Timing, duration and magnitude of the estimated clean fuel shortfall;

(c) Information in addition to material considered under section (2), on potential and current gasoline substitutes and diesel fuel substitutes, including:

(A) Production nationwide;

(B) Use in Oregon; and

(C) Clean fuel infrastructure development in Oregon; and

(d) Any other information DEQ may need in the analysis.

(4) Content of a forecasted deferral. If DEQ determines under section (3) that it must issue a forecasted deferral, DEQ will determine:

(a) The start date and end date of the forecasted deferral period, which may not exceed one year except that DEQ may renew that period if DEQ makes a subsequent determination under section (3));

(b) The fuel deferred from complying with the clean fuel standard; and

(c) Which of the following methods DEQ will use to defer compliance with the clean fuel standard during the forecasted deferral period:

(A) Defer the requirement to comply with the clean fuel standard for up to one year, and allow credits to accrue during the deferral period; or

(B) Propose that EQC revise the CFP through a rulemaking to:

(i) Amend the clean fuel standard;

(ii) Amend the clean fuel standard to extend beyond 2025, the year when Oregon must meet the lowest average carbon intensity values to allow for less stringent annual reductions while still reaching the same average carbon intensity value at the end of the period; or

(iii) Otherwise amend the CFP to address the forecasted fuel supply shortage, such as by adopting a multi-year deferral.

(5) Issuing a forecasted deferral. DEQ will issue a forecasted deferral order to the affected parties with the following information:

(a) DEQ's determination under section (3);

(b) The deferral period as established under section (4);

(c) The fuel deferred as established under section (4); and

(d) The method selected by DEQ to comply as established under section (4).

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-2200
Monthly Fuel Price Deferral

(1) Definitions. As used in this rule:

(a) "Diesel Blends" means diesel fuel and diesel fuel blended with biodiesel.

(b) "Gasoline Blends" means gasoline and gasoline blended with ethanol.

(c) "Price evaluation threshold" means that the 12-month rolling weighted average price of gasoline blends or diesel blends in Oregon is

more than five percent higher than the 12-month rolling weighted average price in the:

(A) Statutory PADD 5 for gasoline; or

(B) Statutory PADD 5 or, if unavailable, Actual PADD 5, for diesel fuel.

(2) Average price. Each month, DEQ will calculate the 12-month rolling average price for gasoline blends and diesel blends using data available from the U.S. Energy Information Administration or a comparable source, as follows:

(a) Oregon's 12-month rolling average price. Each month, DEQ will calculate the Oregon 12-month rolling average price for gasoline blends and diesel blends.

(b) Gasoline 12-month rolling weighted-average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume-weighted average price for gasoline blends using the statutory PADD 5 data.

(c) Diesel 12-month rolling weighted-average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume-weighted average price for diesel blends using the actual PADD 5 or, if available, the statutory PADD 5 data.

(3) Determining need for cost mitigation. If the price of gasoline blends or diesel blends in Oregon exceeds the price evaluation threshold:

(a) DEQ will provide fuel data and analysis to EQC that includes the applicable information under sections (4) and (5);

(b) EQC will determine the need to mitigate the costs of complying with the clean fuel standard after considering the DEQ fuel data and analysis. EQC will direct DEQ to implement one or more cost mitigation strategies if EQC determines that:

(A) The price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard; and

(B) Implementing one of the strategies under section (6) is necessary to mitigate the costs of compliance with the clean fuel standard.

(4) Determining whether the clean fuel standard caused the price evaluation threshold exceedance. EQC will determine whether the price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard. DEQ will analyze and provide the following information to EQC:

(a) Whether fuel volume and price data is faulty or incomplete;

(b) Price of gasoline substitutes and diesel substitutes;

(c) Changes in demand for gasoline blends and diesel blends such as changes caused by:

(A) An increase in population; or

(B) An increase in fuel usage.

(d) A decrease in retail outlets for gasoline blends and diesel blends in Oregon;

(e) Natural or manmade disasters affecting Oregon but not the statutory PADD 5 as a whole;

(f) Regulatory change that affects Oregon but not the statutory PADD 5 as a whole;

(g) Change in the usage of reformulated gasoline or other special fuel in any state in the statutory PADD 5; and

(h) Any other information DEQ or EQC may need to determine whether the clean fuel standard caused the price of Oregon gasoline blends or diesel blends to exceed the price evaluation threshold.

(5) Factors in determining whether a price mitigation strategy is necessary. EQC will consider the following factors to determine whether it is necessary to mitigate the costs of compliance with the clean fuel standard, or whether the price of gasoline blends or diesel blends will fall below the price evaluation threshold within six months without implementing a cost mitigation strategy:

(a) Fuel price trends;

(b) Price of gasoline substitutes and diesel substitutes;

(c) Availability and use of gasoline substitutes and diesel substitutes in Oregon;

(d) Compliance schedule for the fuel;

(e) Future supply of gasoline substitutes and diesel substitutes; and

(f) Any other information DEQ or EQC may need to determine whether implementing standard cost mitigation strategy is necessary.

(6) Cost mitigation strategies. If EQC determines under subsection (3)(b) that mitigating the cost of compliance is necessary, it will order, and DEQ will implement, one of the following cost mitigation strategies with EQC-approved start and end dates:

(a) Suspending deficit accrual during a cost mitigation period and allowing credits to accrue during that period;

(b) Allowing credits to accrue and allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(2) and 340-253-1030(3), during a cost mitigation period. EQC may allow deficits to be carried over for one, two, or three future compliance periods before the deficits must be reconciled;

(c) Suspending deficit accrual for a percentage of the fuel during the cost mitigation period and allowing credits to accrue during the period;

(d) Eliminating the requirement to comply with the clean fuel standard for up to one year; or

(e) Adopting any other price mitigation strategy that EQC determines to be necessary to effectively mitigate the cost of compliance.

(7) EQC reconsideration. EQC may reconsider and revise its determinations under sections (4) and (5) if the information it considered under those sections has changed. Based on that reconsideration, EQC may reconsider and revise or withdraw any cost mitigation strategies ordered under section (6).

(8) DEQ implementation. In implementing a cost mitigation strategy as EQC directs, DEQ will notify the affected parties with the following information:

(a) EQC's determinations under sections (4) through (6);

(b) The start date and end date for the cost mitigation strategy period;

(c) The fuel(s) affected by the price mitigation strategy; and

(d) The cost mitigation strategy that EQC adopted under section (6).

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8010
Table 1 — Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8020
Table 2 — Oregon Clean Fuel Standard for Diesel Fuel and Diesel Substitutes

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8030
Table 3 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes

NOTE: DEQ recognizes that indirect effects, including indirect land use change, are real. However the methodologies to quantify these effects are still in development. DEQ intends to monitor the science of indirect effect and will adjust carbon intensity values through future rulemaking as methodologies improve.
NOTE: Renumbered from 340-253-3010.
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3010 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8040
Table 4 — Oregon Carbon Intensity Lookup Table for Diesel and Diesel Substitutes

NOTE: DEQ recognizes that indirect effects, including indirect land use change, are real. However the methodologies to quantify these effects are still in development. DEQ intends to monitor the science of indirect effect and will adjust carbon intensity values through future rulemaking as methodologies improve.
NOTE: Renumbered from 340-253-3020
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3020 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8050
Table 5 — Summary Checklist of Quarterly Progress and Annual Compliance Reporting Requirements

Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8060
Table 6 — Oregon Energy Densities of Fuels

NOTE: Renumbered from 340-253-3030.
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3030 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8070
Table 7 — Oregon Energy Economy Ratio Values for Fuels Used as Gasoline Substitutes

NOTE: Renumbered from 340-253-3040.
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3040 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

340-253-8080
Table 8 — Oregon Energy Economy Ratio Values for Fuels Used as Diesel Substitutes

NOTE: Renumbered from 340-253-3050.
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3050 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Rule Amendments Related to the 2015 Oregon Sport Fishing Regulations.
Adm. Order No.: DFW 165-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 7-1-2014
Rules Amended: 635-011-0100, 635-011-0104, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134, 635-023-0140, 635-039-0080, 635-039-0090
Subject: These amended rules contain sport fishing regulations for finfish, shellfish, and marine invertebrates for 2015. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-011-0100
General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2015 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 130-2013(Temp), f. 12-9-13, cert. ef. 12-10-13 thru 6-8-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-011-0104
Licenses, Tags, and Permits

(1) Hatchery Salmon and Steelhead Harvest Tag Requirements:

(a) Persons holding an annual angling license and an annual angling harvest tag may purchase Hatchery Salmon and Steelhead Harvest Tags. There is no limit on the number of Hatchery Salmon and Steelhead Harvest Tags an angler may purchase per year. The purchase of each tag entitles the angler to take a combined total of 10 hatchery salmon or steelhead;

(b) Only adipose or otherwise fin-clipped adult salmon or adipose fin-clipped steelhead may be recorded on the Hatchery Salmon and Steelhead Harvest Tag;

(c) A valid annual angling license and a valid annual angling harvest tag must be in possession while fish validated on the Hatchery Salmon and Steelhead Harvest Tag are in angler's possession. All tags purchased must be in angler's possession while angling for salmon or steelhead;

(d) Fish must be recorded immediately upon removal from the water and fish must be recorded in the chronological order caught. The angler who landed the fish must record the fish on his or her tag irrespective of who hooked the fish; and

(e) Hatchery Salmon and Steelhead Harvest Tags should be returned to ODFW upon expiration.

(2) Columbia River Basin Endorsement:

(a) The Columbia River Basin is defined as: The mainstem Columbia River from Buoy 10 upstream to include all rivers and their tributaries that drain into the mainstem Columbia River.

(b) Beginning January 1, 2014 a valid Columbia River Basin Endorsement must be in possession while angling for salmon, steelhead, or sturgeon in the Columbia River Basin except during free fishing weekend where every angler is considered as having a valid Columbia River Basin Endorsement.

(c) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with an annual license is $9.75, in addition to fees as described in ORS 497.121 and ORS 497.123.

(d) The fee for the Columbia River Basin Endorsement when purchased separately is $9.75 (plus a $2.00 agent fee).

(e) The fee for the Columbia River Basin Endorsement, when purchased in conjunction with a daily license is $1.00 per each day, in addition to those fees as described in ORS 497-121.

(f) Purchase of a Columbia River Basin Endorsement is not required for free fishing weekend.

(g) No fee will be charged for a Columbia River Basin Endorsement for an angler(s) in possession of:

(A) A resident disabled veteran, resident pioneer, resident and non-resident youth under 14 license; or

(B) A Permanent Wheel-chair Angling License a Permanent Blind Angler License, or a Permanent Senior.

Stat. Auth.: ORS 496.138, 496.146, 497.121, 497.123 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 101-2001, f. & cert. ef. 10-23-01; DFW 125-2013, f. 10-30-13, cert. ef. 11-1-13; DFW 128-2013(Temp), 11-18-13, cert. ef. 12-1-13 thru 12-31-13; DFW 133-2013, f. & cert. ef. 12-9-13; DFW 49-2014(Temp), f. 5-27-14, cert. ef. 6-1-14 thru 6-30-14; Administrative correction, 7-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-013-0004
Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the 2015 Oregon Sport Fishing Regulations.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H, and the 2015 Oregon Sport Fishing Regulations contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the 2015 Oregon Sport Fishing Regulations. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subparts A and H).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-

03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert .ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-014-0080
Purpose and Scope

(1) The purpose of division 14 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 14 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 14 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-014-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations** pamphlet.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f, 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert, ef, 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-3-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-10-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12; DFW130-2012(Temp), f. 10-10-12, cert. ef. 10-13-12 thru 12-31-12; DFW 135-2012(Temp), f. 10-22-12, cert. ef. 10-24-12 thru 12-31-12; DFW 139-2012(Temp), f. 10-30-12, cert. ef. 10-31-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 43-2013(Temp), f. 5-29-13, cert. ef. 6-1-13 thru 10-31-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 60-2013(Temp), f. 6-24-13, cert. ef. 6-30-13 thru 9-30-13; Administrative correction 11-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 74-2014(Temp), f. 6-23-14, cert. ef. 6-30-14 thru 9-30-14; DFW 110-2014, f. & cert. ef. 8-4-14; DFW 111-2014(Temp), f. & cert. ef. 8-4-14 thru 9-30-14; DFW 133-2014(Temp), f. 9-16-14 & cert. ef. 9-17-14 thru 12-31-14; DFW 148-2014(Temp), f. 10-13-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-016-0080
Purpose and Scope

(1) The purpose of division 16 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 16 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 16 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-016-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-

25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 137-2011(Temp), 9-30-11, cert. ef. 10-1-11 thru 12-31-11; DFW 145-2011(Temp), f. 10-11-11, cert. ef. 10-12-11 thru 12-31-11; DFW 149-2011(Temp), f. 10-20-11, cert. ef. 10-22-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 138-2012(Temp), f. 10-29-12, cert. ef. 10-31-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 124-2013(Temp), f. 10-29-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 110-2014, f. & cert. ef. 8-4-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-017-0080
Purpose and Scope

(1) The purpose of division 17 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 17 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 17 to determine all applicable sport fishing requirements for the Willamette Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-017-0090
Inclusions and Modifications

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp). f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 67-2013(Temp), f. 7-3-13, cert. ef. 7-11-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 62-2014(Temp), f. & cert. ef. 6-10-14 thru 10-31-14; DFW 70-2014(Temp), f. & cert. ef. 6-13-14 thru 6-30-14; DFW 73-2014(Temp), f. 6-20-14, cert. ef. 6-23-14 thru 10-31-14; DFW 141-2014(Temp), f. 9-25-14, cert. ef. 9-26-14 thru 12-31-14; DFW 150-2014(Temp), f. 10-14-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-017-0095
Sturgeon Season

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11;

DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 9-2012(Temp), f. 2-6-12, cert. ef. 2-17-12 thru 4-30-12; DFW 17-2012(Temp), f. 2-22-12, cert. ef. 2-23-12 thru 4-30-12; Administrative correction, 5-25-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 13-2013(Temp), f. 2-13-13, cert. ef. 2-14-13 thru 7-31-13; DFW 17-2013(Temp), f. 2-27-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 79-2013(Temp), f. 7-23-13, cert. ef. 7-25-13 thru 12-31-13; DFW 103-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-018-0080
Purpose and Scope

(1) The purpose of division 18 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 18 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 18 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-018-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96, FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 34-2012(Temp), f. 4-13-12, cert. ef. 4-15-12 thru 7-31-12; DFW 55-2012(Temp), f. & cert. 6-4-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 88-2012(Temp), f. 7-16-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 16-2013(Temp), f. 2-25-13, cert. ef. 4-15-13 thru 6-30-13; DFW 75-2013(Temp), f. 7-15-13, cert. ef. 8-1-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 13-2014(Temp), f. 2-18-14, cert. ef. 4-15-14 thru 7-31-14; DFW 83-2014(Temp), f. 7-1-14, cert. ef. 8-1-14 thru 10-31-14; Administrative correction 11-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-019-0080
Purpose and Scope

(1) The purpose of division 19 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 19 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 19 to determine all applicable sport fishing requirements for the Northeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-019-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp) f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-

11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12; Administrative correction 9-20-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 153-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 4-30-13; DFW 31-2013(Temp), f. 5-14-13, cert. ef. 5-16-13 thru 6-30-13; DFW 39-2013(Temp), f. 5-22-13, cert. ef. 5-24-13 thru 11-19-13; DFW 46-2013(Temp), f. 5-30-13, cert. ef. 6-1-13 thru 11-26-13; DFW 62-2013(Temp), f. 6-26-13, cert. ef. 7-5-13 thru 12-31-13; DFW 74-2013(Temp), f. 7-15-13, cert. ef. 7-19-13 thru 9-1-13; Administrative correction 11-1-13; DFW 121-2013(Temp), f. 10-24-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 42-2014(Temp), f. 5-12-14, cert. ef. 5-17-14 thru 6-1-14; DFW 47-2014(Temp), f. 5-27-14, cert. ef. 5-31-14 thru 7-31-14; DFW 53-2014(Temp), f. 5-28-14, cert. ef. 6-1-14 thru 7-31-14; DFW 58-2014(Temp), f. 6-9-14, cert. ef. 6-21-14 thru 8-31-14; DFW 71-2014(Temp), f. & cert. ef. 6-16-14 thru 9-1-14; DFW 72-2014(Temp), f. & cert. ef. 6-19-14 thru 9-1-14; DFW 75-2014(Temp), f. 6-23-14, cert. ef. 6-27-14 thru 9-1-14; DFW 82-2014(Temp), f. 7-1-14, cert. ef. 7-5-14 thru 9-1-14; DFW 86-2014(Temp), f. 7-2-14, cert. ef. 7-5-14 thru 9-1-14; DFW 97-2014(Temp), f. 7-18-14, cert. ef. 7-21-14 thru 9-30-14; Administrative correction, 10-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-021-0080
Purpose and Scope

(1) The purpose of division 21 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 21 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2015 Oregon Sport Fishing Regulations** in addition to division 11 and division 21 to determine all applicable sport fishing requirements for the Southeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-021-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-0 2 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 60-2012(Temp), f. 6-11-12, cert. ef. 6-13-12 thru 9-1-12; DFW 114-2012(Temp), f. 8-30-12, cert. ef. 9-1-12 thru 2-27-13; DFW 117-2012(Temp), f. 9-5-12, cert. ef. 9-7-12 thru 2-27-13; DFW 122-2012(Temp), f. 9-21-12, cert. ef. 9-21-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 61-2013(Temp), f. 6-24-13, cert. ef. 7-1-13 thru 12-27-13; DFW 93-2013(Temp), f. 8-22-13, cert. ef. 8-24-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 57-2014(Temp), f. 6-9-14, cert. ef. 6-11-14 thru 9-1-14; DFW 90-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 12-31-14; DFW 116-2014(Temp), f. 8-6-14, cert. ef. 8-9-14 thru 12-31-14; DFW 149-2014(Temp), f. 10-13-14, cert. ef. 11-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0080
Purpose and Scope

(1) The purpose of division 23 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 23 incorporates by reference the **2015 Oregon Sport Fishing Regulations**. Therefore, persons must consult the 2015 Oregon Sport Fishing Regulations in addition to division 11 and division 23 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0090
Inclusions and Modifications

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f.8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp). f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp) f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-

1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03. cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 10-2014(Temp), f. 2-12-14, cert. ef. 3-1-14 thru 3-31-14; Administrative correction, 4-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0095
Sturgeon Season

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 183.325, 506.109, 506.119
Stats. Implemented: ORS 506.129, 507.030
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert .ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-1 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 5-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 14-2014(Temp), f. 2-20-14, cert. ef. 2-24-14 thru 7-31-14; DFW 27-2014(Temp), f. 3-28-14, cert. ef. 5-1-14 thru 7-31-14; DFW 56-2014(Temp), f. 6-9-14, cert. ef. 6-13-14 thru 7-31-14; DFW 87-2014(Temp), f. 7-2-14, cert. ef. 7-11-14 thru 12-31-14; DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0125
Spring Sport Fishery

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 26-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 7-1-13; DFW 38-2013(Temp), f. 5-22-13, cert. ef. 5-25-13 thru 7-1-13; DFW 49-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 6-30-13; Administrative correction, 7-18-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 12-2014(Temp), f. 2-13-14, cert. ef. 3-1-14 thru 6-15-14; DFW 29-2014(Temp), f. 4-3-14, cert. ef. 4-4-14 thru 6-15-14; DFW 31-2014(Temp), f. 4-17-14, cert. ef. 4-19-14 thru 7-31-14; DFW 40-2014(Temp), f. 5-7-14, cert. ef. 5-9-14 thru 6-30-14; DFW 44-2014(Temp), f. 5-14-14, cert. ef. 5-15-14 thru 6-15-14; DFW 52-2014(Temp), f. 5-28-14, cert. ef. 5-31-14 thru 6-30-14; Administrative correction, 7-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0128
Summer Sport Fishery

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 55-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 66-2013(Temp), f. & cert. ef. 6-27-13 thru 7-31-13; DFW 70-2013(Temp), f. 7-11-13, cert. ef. 7-13-13 thru 7-31-13;

Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 68-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 85-2014(Temp), f. 7-2-14, cert. ef. 7-3-14 thru 7-31-14; DFW 92-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0130
Fall Sport Fishery

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162
Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10, DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp). f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 81-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; DFW 92-2013(Temp), f. 8-22-13, cert. ef. 8-23-13 thru 12-31-13; DFW 100-2013(Temp), f. 9-12-13, cert. ef. 9-13-13 thru 12-31-13; DFW 107-2013(Temp), f. 9-25-13, cert. ef 9-26-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 96-2014(Temp), f. 7-18-14, cert. ef. 8-1-14 thru 12-31-14; DFW 100-2014(Temp), f. 7-22-14, cert. ef. 8-1-14 thru 12-31-14; DFW 128-2014(Temp), f. 9-3-14, cert. ef. 9-6-14 thru 9-30-14; DFW 143-2014(Temp), f. 10-2-14, cert. ef. 10-3-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0134
Snake River Fishery

The **2015 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 35-2012(Temp), f. 4-16-12, cert. ef. 4-22-12 thru 9-30-12; DFW 93-2012(Temp), f. 7-24-12, cert. ef. 8-5-12 thru 9-30-12; DFW 109-2012(Temp), f. 8-21-12, cert. ef. 9-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 29-2013(Temp), f. 4-25-13, cert. ef. 5-4-13 thru 9-30-13; DFW 76-2013(Temp), f. 7-16-13, cert. ef. 7-21-13 thru 9-30-13; DFW 94-2013(Temp), f. 8-23-13, cert. ef. 9-1-13 thru 11-30-13; Administrative correction, 12-19-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 33-2014(Temp), f. 4-21-14, cert. ef. 4-26-14 thru 9-30-14; DFW 98-2014(Temp), f. 7-18-14, cert. ef. 7-21-14 thru 9-30-14; DFW 122-2014(Temp), f. 8-4-14, cert. ef. 9-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-023-0140
Youngs Bay Control Zone

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) The Youngs Bay Control Zone is closed to recreational angling from August 1 through September 15.

(a) The Youngs Bay Control Zone is defined as those waters southerly of a line originating on the Oregon shore at the east end of the seawall at the Warrenton Fiber log yard (approximately river mile 10.1) northeasterly through green navigation buoys 29, 31, 33, and 35A to the center of the Astoria-Megler Bridge abutment adjacent to, and north of the ship channel, and continuing southerly in line with the center of the Megler Bridge span to the Oregon shore.

(b) The Youngs Bay Control Zone includes all waters from the line defined in section (2)(a) above south to the Highway 101 Bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & SB 830 (2013)
Hist.: DFW 4-2014(Temp), f. 1-23-14, cert. ef. 2-1-14 thru 7-30-14; DFW 9-2014, f. & cert. ef. 2-10-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-039-0080
Purpose and Scope

(1) The purpose of division 39 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 39 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled 2015 Oregon Sport Fishing Regulations;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2013 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2013 ed.), as amended;

(d) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580);

(e) Federal Register Vol. 79. No. 48, dated March 12, 2014 (79 FR 3906); and

(f) Federal Register Vol. 79. No. 65, dated April 4, 2014 (79 FR 18827).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and division 39 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

635-039-0090
Inclusions and Modifications

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year. The sport harvest caps are:

(a) Black rockfish, 440.8 metric tons.

(b) Cabezon, 16.8 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serriceps).

(4) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. The sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the **2015 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2015:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2015 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one may be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) Canary rockfish; and

(C) Cabezon from January 1 through June 30.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2013 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15

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Rule Caption: Recreational Sturgeon Fishery In the Bonneville Pool Begins January 1, 2015.

Adm. Order No.: DFW 166-2014(Temp)

Filed with Sec. of State: 12-18-2014

Certified to be Effective: 1-1-15 thru 3-1-15

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: This amended rule opens a recreational white sturgeon fishery in the Bonneville Pool of the Columbia River, including adjacent tributaries, beginning at 12:01 a.m. Thursday, January 1 through Sunday, March 1, 2015. White Sturgeon between 38-54 inches in fork length may be retained. Modifications were made consistent with Joint State Action taken December 18, 2014 by the Oregon and Washington Departments of Fish and Wildlife in a meeting of the Columbia River Compact.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0095

Sturgeon Season

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) Beginning January 1 through March 1 (60 days) retention of white sturgeon between 38-54 inches in fork length is allowed in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

Stat. Auth.: ORS 183.325, 506.109, 506.119

Stats. Implemented: ORS 506.129, 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert .ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert ef. 4-13-09 thru 10-9-09;

DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-1 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 5-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 14-2014(Temp), f. 2-20-14, cert. ef. 2-24-14 thru 7-31-14; DFW 27-2014(Temp), f. 3-28-14, cert. ef. 5-1-14 thru 7-31-14; DFW 56-2014(Temp), f. 6-9-14, cert. ef. 6-13-14 thru 7-31-14; DFW 87-2014(Temp), f. 7-2-14, cert. ef. 7-11-14 thru 12-31-14; DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 166-2014(Temp), f. 12-18-14, cert. ef. 1-1-15 thru 3-1-15

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Rule Caption: Establish 2015 Seasons and Regulations for Game Mammals
Adm. Order No.: DFW 1-2015
Filed with Sec. of State: 1-6-2015
Certified to be Effective: 1-6-15
Notice Publication Date: 9-1-2014
Rules Adopted: 635-075-0022
Rules Amended: 635-065-0001, 635-065-0011, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0625, 635-065-0705, 635-065-0740, 635-065-0765, 635-066-0000, 635-067-0000, 635-067-0015, 635-067-0032, 635-067-0034, 635-072-0000, 635-075-0001, 635-075-0005, 635-075-0010, 635-075-0020
Rules Repealed: 635-065-0705(T)
Subject: Establish 2015 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including, but not limited to, general hunting and controlled hunt regulations.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-065-0001
Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 65 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled 2015 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the" 2015 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices, and website of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0011
Mandatory Reporting Penalty

All big game tag holders, except for bighorn sheep and Rocky Mountain goat, and all turkey tag holders are required to report hunting effort and harvest.

(1) Reporting deadlines for 2014–2015 seasons are as follows:

(a) January 31, 2015: For hunts ending between April 1 and December 31, 2014.

(b) April 15, 2015: For hunts ending between January 1 and March 31, 2015.

(2) Any person with any deer or elk tag for hunts and seasons listed in the 2014 Oregon Big Game Regulations pamphlet, issued through the Point of Sale (POS) system, that fails to report by deadlines established in OAR 635-065-0011(1) will not be able to obtain a license to hunt game mammals or game birds in Oregon without paying a penalty.

(a) The penalty will be assessed beginning December 1, 2015 with purchase of a 2016 license.

(b) The penalty fee amount will be $25.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 10-2013, f. & cert. ef. 2-7-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0015
General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20–30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid additional general cougar (mountain lion) tag;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 90, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)–(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 90, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk — first season tag;

(e) One valid Rocky Mountain elk — second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) In addition to the tags described in OAR 635-065-0015(3), (4), and (5), a person during an annual hunting season may obtain or possess only one valid "Mandatory Hunter Reporting Incentive Tag" per annual hunting season. If the Department awards a hunter such a tag through the controlled hunt draw authorized by 635-060-0030(5), the following requirements will apply:

(a) On or before July 15, 2014 the hunter must inform the Department which species the tag is to be issued for (pronghorn antelope, deer, or elk) and purchase the tag. Tags not purchased by July 15 will be offered to an alternate hunter with a tag sale deadline of July 31, 2014.

(b) Hunting hours, hunt dates, bag limit and hunt area for Mandatory Hunter Reporting Incentive Tags will be the same as those listed in OAR 635-090-150(3) for deer or (4) for elk , or 635-067-0028(2) for pronghorn.

(c) Bag limit: one pronghorn antelope or one deer or one elk.

(d) Oregon Department of Fish and Wildlife employees are not eligible for a Mandatory Hunter Reporting Incentive Tag.

(8) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(9) Except as provided in OAR 635-067-0041 a person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(10) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(11) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the uniformed services returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the Department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a tag but fails to make the purchase by the deadline, may purchase the tag late if the person:

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) Pays the Department the fee for a duplicate tag, in addition to the usual tag fee.

(D) A tag purchased for a season that has not begun may be canceled and replaced with a tag for an ongoing season using the process outlines in 635-065-0015(b)(A) and (B) provided the original tag is surrendered with the affidavit and the fee for a duplicate tag is paid to the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; DFW 70-2010(Temp), f. & cert. ef. 5-18-10 thru 11-10-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0090
Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a licensed physician, certified nurse practitioner, or licensed physician assistant of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the Department is qualified for expanded bag limits as follows:

(a) Season/Tag — Bag Limit.

(b)(A) General or controlled buck deer — One deer.

(B) In the following units: Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Hood, Indigo, Maupin, McKenzie, Melrose, Santiam, Willamette.

(c)(A) General or controlled bull elk — Legal bull or antlerless elk.

(B) In the following units: Applegate, Beatys Butte, Beulah, Biggs, Catherine Creek, Chesnimnus, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Dixon (outside National Forest Lands within the unit), Evans Creek (outside National Forest Lands within the unit), East Fort Rock (that portion east of Hwy 97), Fossil, Grizzly, Hood, Imnaha, Indigo (outside National Forest Lands within the unit), Juniper, Keating, Lookout Mountain, Malheur River, Maupin, McKenzie (outside National Forest Lands within the unit), Melrose, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Ritter portion of the Heppner unit (that part of unit 48 south and east of the North Fork John Day River), Rogue (outside National Forest Lands within the unit), Saddle Mountain, Santiam (outside National Forest Lands within the unit), Scappoose, Silvies, Siuslaw, Sixes, Sled Springs, Steens Mountain, South Sumpter (that part of Unit 51 south of Burnt Rvr Canyon Rd from Durkee to junction State Hwy 245 and Hwy 245 from junction Burnt Rvr Canyon Rd to Unity), Wagontire, White River, Whitehorse, Willamette, Wilson.

(d) Controlled pronghorn antelope.

(e)(A) Buck only hunts — One pronghorn.

(B) In the following units: Beatys Butte, Biggs, Columbia Basin, Fort Rock, Grizzly, Juniper, Keating, Lookout Mountain, Malheur River, Maupin, Maury, Murderers Creek, Northside, Ochoco, Paulina, Silver Lake, Silvies, Steens Mountain, Sumpter, Wagontire, Warner. For hunts with bag limits other than one buck or one bull, the bag limit remains as shown in the Oregon Big Game Regulations.

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0401
Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, October 2, 2015.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 28, 2015.

(3) No General Season bear tag shall be issued after 11:59 pm, Pacific Time, October October 2, 2015.

(4) SW Additional Bear Tags may be purchased anytime during the bear hunting season, after a General Season Bear tag has been purchased. An unused bear tag must be in the hunter's position at the time they are hunting.

(5) No General Season cougar tag shall be issued after 11:59 pm, Pacific Time, October October 2, 2015.

(6) Additional Cougar Tags may be purchased anytime during the cougar hunting season, after a General Season Cougar tag has been purchased. An unused cougar tag must be in the hunter's position at the time they are hunting.

(7) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October–27, 2015.

(8) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 6, 2015.

(9) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 13, 2015.

(10) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 20, 2015.

(11) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 16, 2015.

(12) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 28, 2015.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0625

Regulations on State and Federal Wildlife Areas, Refuges and Special Areas

State and Federal wildlife areas, refuges and special areas listed below shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

(2) Cascade Head — Lincoln City Area: The Cascade Head — Lincoln City Area is closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting is restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head — Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(3) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(4) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located within the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to its intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to its intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(5) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(6) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area is closed to all big game hunting except for and during controlled hunts specific to the NBHMA by hunters possessing a controlled hunt tag for the area. Elk, black bear, and cougar hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to valid elk, black bear, or cougar tags. The use of bait for hunting game mammals is prohibited on NBHMA. All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31, 32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18.

(7) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the Refuge are open to deer and elk hunting under special regulations established by the Refuge.

(b) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information about deer and elk hunting locations, seasons, weapon restrictions, and application instructions are available at the refuge office at 541-757-7236 or on their website (http://www.fws.gov/refuge/William_L_Finley/Hunt.html).

(8) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(9) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope Mandatory Reporting Incentive tag holders, and pronghorn antelope and bighorn sheep auction and raffle tag holders but is closed for Access and Habitat deer and elk auction and raffle and Mandatory Reporting Incentive tag holders.

(10) Heppner Regulated Hunt Area: bowhunting; open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4 , and 5 South, Ranges 25, 26, 27 and 28 East;

(11) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(12) John Day River Refuge: Includes all land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. Within this area, from the Columbia Rvr upstream to Rock Cr, the area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. The remaining area from Rock Cr upstream to Thirty Mile Cr is open to the hunting of all game birds during authorized seasons. Hunting of big game is allowed during authorized seasons.

(13) Klamath Marsh National Wildlife Refuge: This area is closed to all deer and elk hunting.

(14) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 are closed to all hunting.

(15) Lost Valley Ranch RHA: Open to public access and hunting from August 1 to March 31. Camping, horseback riding, and open fires are prohibited. Closed to all motor vehicle use unless posted otherwise. (Approximately 9 square miles in T5 and 6S, and R22 and 23E).

(16) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 is open during authorized rifle and bow deer and pronghorn antelope seasons.

(17) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(18) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(19) Metolius Wildlife Refuge (Jefferson County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

(20) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek

Watershed controlled elk tag or a Mill Creek Watershed controlled deer tag and a Forest Service entry permit.

(21) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(22) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(23) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(24) Snake River Islands (Malheur County): Closed to hunting with rifles.

(25) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(26) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot high elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle or bow. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The main study area is open to hunting of other species during authorized seasons. The 12-foot right-of-way along each side of all eight foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually.

Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(27) Umatilla Refuge (Morrow County): This refuge is closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 78.

(28) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(29) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 80-2013(Temp), f. 7-25-13, cert. ef. 7-26-13 thru 1-21-14; Administrative correction, 2-24-14; DFW 117-2014, f. & cert. ef. 8-7-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0705
Muzzleloading Rifles

During controlled muzzleloader only seasons:

(1) Hunters shall use any long gun that:

(a) Is fired from the shoulder;

(b) Is loaded from the muzzle;

(c) Has an open ignition system;

(d) Is a single shot except for muzzleloading shotguns that may be double barreled;

(e) Scopes (permanent or detachable), and sights that use batteries, artificial light or power, are not allowed during muzzleloader-only seasons or during 600 series hunts where there is a weapon restriction of "shotgun/muzzleloader only" or "archery/muzzleloader only". However, this restriction does not apply to a visually impaired hunter who has a visual acuity of ≤20/200 with lenses or visual field of ≤ 20 degrees, provided that the hunter holds an Oregon Disabilities Hunting and Fishing Permit. Open and peep sights made from alloys, plastic, or other materials that do not have the properties described above are legal. Open or iron sights that make use of fiber optics or fluorescent paint are also legal.

(2) During muzzleloader-only seasons and 600 series hunts where there is a weapon restriction of shotgun/muzzleloader only or archery/muzzleloader only, it is illegal to hunt with jacketed bullets, sabots, and bullets with plastic or synthetic tips or bases. Only the following projectile/bullet types are allowed:

(a) Round balls made of lead, lead alloy, or federally-approved non-toxic shot material, used with cloth, paper or felt patches;

(b) Conical bullets made of lead, lead alloy, or federally-approved nontoxic shot material, with a length that does not exceed twice the diameter;

(c) Lead free copper conical bullets with a length that does not exceed twice the diameter.

(3) Hunters shall use only flint or percussion caps as a source of ignition.

(4) Hunters shall use only loose or granular black powder or black powder substitutes as propellants.

(5) Any .40 calibers or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(6) Any .50 caliber or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt bighorn sheep, Rocky Mountain goat, or elk.

(7) Hunters shall use only number 1 or larger buckshot or bullets as described in OAR 635-065-0705(2) for hunting deer, black bear or cougar (mountain lion).

(8) Hunters shall use only single projectiles as described in OAR 635-065-0705(2) for hunting pronghorn antelope, elk, bighorn sheep, or Rocky Mountain goat.

(9) Hunters may only use a legal muzzleloading firearm as described in OAR 635-065-0705. During centerfire firearms seasons where muzzleloaders are also a legal firearm, hunters may:

(a) Use any .40 caliber or larger muzzleloading firearm to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(b) Use any .50 caliber or larger muzzleloading firearm to hunt bighorn sheep, Rocky Mountain goat, or elk.

(c) Use any muzzleloader ignition type (excepting matchlock), any sight, any propellant, or any bullet type.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 21-1985, f. & ef. 5-7-85; FWC 43-1985, f. & ef. 8-22-85; FWC 11-1987, f. & ef. 3-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 125-2014(Temp), f. & cert. ef. 8-26-14 thru 2-1-15; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0740
Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during the standard eastern Oregon controlled deer buck season (October 3–October 14, 2015) Cascade bull elk season, Coast bull elk seasons, or Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 21–November 29, 2015) without a valid, unused tag for that species, time period and area on their person. EXCEPTIONS:

(a) Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

(b) Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (Canis latrans) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 21–November 29, 2015).

(c) Hunters who have a tag for one of the hunts listed in this paragraph may hunt bear and/or cougar within the time period and area for which their deer or elk tag is valid (used or unused) provided they have a valid unused bear and/or cougar tag.

(d) Hunters are not required to have an elk tag to hunt bear or cougar in the Applegate WMU during elk seasons.

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (3) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the Department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (Internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, "computer-assisted hunting" (Internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and "facilities for computer-assisted remote hunting" means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat is:

(a) the animal's scalp which shall include the attached eyes and ears, if animal is female; or ears, antlers or horns, and eyes if the animal is male, or;

(b) the head naturally attached to at least one quarter of the carcass or:

(c) reproductive organs (testicles, scrotum, or penis if male; vulva or udder (mammary) if female) naturally attached to one quarter of the carcass or to another major portion of meat.

(A) For hunts with antler or horn restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers or horns naturally attached shall accompany the carcass or major portions of meat.

(B) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, (testicles, scrotum, penis, vulva, udder, mammary), either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken.

(4) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the Department.

(5) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the Department or by the Oregon State Police.

(6) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the Department or by the Oregon State Police.

(7) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(8) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the Department or personnel of the Oregon State Police prior to transporting.

(9) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the Department may be made available to scientific and educational institutions and for ceremonial purposes.

(10) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) meat that is cut and wrapped commercially or privately;

(b) meat that has been boned out;

(c) quarters or other portions of meat with no part of the spinal column or head attached;

(d) hides and/or capes with no head attached;

(e) skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) antlers with no tissue attached;

(g) upper canine teeth (buglers, whistlers, ivories);

(h) finished taxidermy heads.

(11) For the purposes of the parts and carcass import ban in subsection 10, the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(12) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(13) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection 10 shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by

Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection 10 shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 135-2008, f. & cert. ef. 10-17-08; DFW 2-2009, f. & cert. ef. 1-9-09; DFW 8-2010(Temp), f. & cert. ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & cert. ef. 2-26-10 thru 8-24-10; DFW 36-2010(Temp), f. & cert. ef. 3-30-10 thru 9-25-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 92-2012(Temp), f. & cert. ef. 7-23-12 thru 1-19-13; DFW 136-2012, f. & cert. ef. 10-24-12; DFW 137-2012(Temp), f. & cert. ef. 10-24-12 thru 4-22-13; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13; DFW 10-2013, f. & cert. ef. 2-7-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 155-2014(Temp), f. & cert. ef. 10-28-14 thru 4-26-15; DFW 1-2015, f. & cert. ef. 1-6-15

635-066-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 66 incorporates, by reference, the requirement for black bear hunting set out in the document entitled 2015 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2015 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-067-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 67 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2015 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2015 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

(4) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 60. Permitted weapons and ammunition are established in OAR chapter 635, division 65. Controlled hunt tag numbers for 2014 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 67 by reference.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-067-0015
General Cougar Season Zone Harvest Quotas

(1) Hunt Zone: A — Hunt Name: Coast/North Cascades:
(a) Harvest Quota: 180;
(b) Hunt Area: All of Wildlife Units: 10, 11, 12, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 39, 41, and 42.
(2) Hunt Zone: B — Hunt Name: Southwest Cascades:
(a) Harvest Quota: 200;
(b) Hunt Area: All of Wildlife Units: 19, 21, 22, 23, 28, 29, 30, and 31.
(3) Hunt Zone: C — Hunt Name: Southeast Cascades:
(a) Harvest Quota: 80;
(b) Hunt Area: All of Wildlife Units: 32, 33, 34, 35, 75, 76, and 77.
(4) Hunt Zone: D — Hunt Name: Columbia Basin:
(a) Harvest Quota: 100;
(b) Hunt Area: All of Wildlife Units: 38, 40, 43, 44, and 45.
(5) Hunt Zone: E — Hunt Name: Blue Mountains:
(a) Harvest Quota: 270;
(b) Hunt Area: All of Wildlife Units: 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.
(6) Hunt Zone: F — Hunt Name: Southeast Oregon:
(a) Harvest Quota: 140.
(b) Hunt Area: All of Wildlife Units: 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 118, f. & ef. 6-3-77; FWC 32-1978, f. & ef. 6-30-78; FWC 12-1979, f. & ef. 3-28-79; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 19-1980, f. & ef. 4-18-80; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82, Renumbered from 635-060-0700; FWC 15-1983, f. & ef. 4-19-83; FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 57-1990, f. & cert. ef. 6-21-90; FWC 60-1991, f. & cert. ef. 6-24-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 1-2015, f. & cert. ef. 1-6-15

635-067-0032
Bighorn Sheep Auction Tag

(1) One bighorn sheep tag will be auctioned to the highest bidder annually in the manner and at such time as provided by the Department. The Department may contract with a sportsmen's group or organization to conduct the auction.

(2) The bighorn sheep auction tag and auction shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on August 1 and shall end on November 30.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the current year. The remainder of the state is closed to bighorn sheep hunting.

(e) Auction Requirements:

(A) The minimum acceptable bid for a bighorn sheep auction tag shall be $25,000. The bid price includes the hunting license and tag fee. A valid bighorn sheep tag will be provided to the winning bidder in the auction and a valid hunting license will be provided if the winning bidder has not already purchased one, so long as the winning bidder is eligible to purchase an adult Oregon hunting license or a juvenile Oregon hunting license.

(B) Any person, resident or nonresident, is eligible to bid.

(C) If the highest bid is submitted by a person other than the person who is to receive the tag, the Department shall be notified within five business days of the name, address, and phone number of the individual who is to receive the license and tag and his or her position or affiliation with the corporation or organization.

(D) Acceptance of the highest bid shall be conditional until the full amount of the bid is paid. Payment shall be made to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 60 days of the date of the auction, whether conducted by the Department or by a sportsman's group or organization authorized by the Department to conduct the auction.

(E) If the full amount is not paid as provided in OAR 635-067-0032(2)(d)(D), the Department may, at its discretion, reject the bid and offer the tag to the next highest bidder. If the Department offers the tag to the next highest bidder, such next highest bidder must make payment to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 30 days of notification of his or her opportunity to obtain the tag.

(F) The successful bidder may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the Department when and where the hunt will be conducted. The successful bidder shall be required to take appropriate steps to assure that any ram taken is marked with an identification pin by Department personnel within five days of being taken.

(G) The Department shall reserve the right to accept or reject any or all bids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 497.112
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 497.112
Hist.: FWC 16-1987, f. & ef. 5-5-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 16-1989, f. & cert. ef. 3-28-89; FWC 35-1989, f. & cert. ef. 6-6-89; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 36-1990, f. & cert. ef. 4-25-90; FWC 128-1990, f. & cert. ef. 12-24-90; FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94; FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 1-2015, f. & cert. ef. 1-6-15

635-067-0034
Bighorn Sheep Raffle Tag

(1) One bighorn sheep tag will be raffled during the current year to an individual selected at a public drawing. The Department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The bighorn sheep raffle tag shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on August 1 and shall end on November 30.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the tube current year. The remainder of the state is closed to bighorn sheep hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase. Raffle tickets shall be available for purchase in the following denominations:

(A) One ticket package at a cost of $9.50 (plus a $2.00 license agent fee).

(B) Six ticket package at a cost of $49.50 (plus a $2.00 license agent fee).

(C) Thirteen ticket package at a cost of $99.50 (plus a $2.00 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game Regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by Department representatives at various gatherings of sportmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the Department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the Department.

(h) The Department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the Department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., July 31, it will not be issued.

(i) License and Tag Requirements: A valid bighorn sheep tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license or a juvenile Oregon hunting license.

(j) The bighorn sheep tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(k) The winner of the bighorn sheep tag may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the Department as to where and when the hunt will be conducted.

(l) If the holder of the raffle bighorn sheep tag is successful in taking a bighorn sheep ram, that person shall present the ram to the Department for permanent marking within five days of taking of the ram.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats. Implemented: ORS 496.012, 496.138 & 496.146
Hist.: FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94, FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06; Administrative Correction, 6-16-07; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 1-2015, f. & cert. ef. 1-6-15

635-072-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 72 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2015 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2015 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 1-2015, f. & cert. ef. 1-6-15

635-075-0001
Eligibility

A landowner as defined in OAR 635-045-0002 and immediate family as defined in 635-045-0002, owning 40 or more contiguous acres are eligible to receive landowner hunting preference tags for controlled 600 series deer, western Oregon buck deer, western Oregon elk, and eastern Oregon antlerless elk hunts and emergency hunts occurring on their property. To be eligible to receive landowner hunting preference tags for controlled eastern Oregon buck deer, eastern Oregon bull elk, either-sex elk hunts, and either-sex or doe/fawn pronghorn antelope hunts, occurring on their land, a landowner shall own 160 or more contiguous acres. For controlled hunts see OAR divisions 67, 68, 69, 70, 71, 73, and Emergency Hunts in division 78. Tags issued to landowners are in addition to the number of tags issued to the public and authorized in OAR divisions 67, 68, 69, 70, 71, 73, and 78, except as described in 635-075-0020.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 22-1989, f. & cert. ef. 3-28-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 1-2015, f. & cert. ef. 1-6-15

635-075-0005
Registration, Application and Tag Issuance Procedures and Limits for All Controlled Hunts

(1) A landowner shall submit a landowner preference registration form to be eligible for a landowner preference tag. A one-time fee of $30.00 is required at the time of registration for new program participants. A landowner can have only one registration form on file with the Department. However, an individual who owns (through business entities, in the individual's own name or a combination thereof) more than one property eligible for the landowner preference program may register each such property. The registration form is an affidavit certifying ownership, number of acres owned, the county and Wildlife Management Unit where the property is located. This registration form registers the individual and remains valid until the individual registered no longer qualifies as a landowner as defined under OAR 635-045-0002, writes to the Department requesting the registration form be deleted, or the Department notifies the landowner that a renewal is required.

(2) In addition to having a landowner preference registration form on file with the Department, a landowner or an authorized designee identified by the landowner in writing to the Department shall submit a tag distribution form annually. The tag distribution form shall list the names of the landowner, stockholder(s), partner(s), and their immediate family members to receive tags for pronghorn antelope, and the names of the landowner, stockholder(s), partner(s), their immediate family members, and those persons of the landowners' choosing to receive landowner preference tags for deer and elk.

(3) Landowners shall submit registration forms and landowners or their designee shall submit tag distribution forms prior to September 15 for all controlled 100 series buck deer and bull elk hunts, and through the day prior to the season openings for 600 series antlerless deer, antlerless elk, and either-sex or doe/fawn pronghorn antelope hunts. A Landowner Preference Tag Redistribution fee $15.00 will be charged per species for amendments made to the original tag distribution forms.

(4) Registration forms and tag distribution forms are available at no charge in any office of the Department.

(5) Registration forms, tag distribution forms, and applications shall be received at the Salem headquarters office of the Department prior to issuance of any landowner preference tag, except as provided for in OAR 635-075-0007. Landowners are not required to submit proof of ownership with their registration form. Landowners shall be required to submit proof of ownership at the request of the Department or the Oregon State Police acting on behalf of the Department.

(6) A landowner, stockholder(s), partner(s), and immediate family and those persons of the landowners' choosing wishing to also apply for controlled hunt tags shall apply by the May 15 controlled hunt deadline. Listing a hunt choice other than a landowner preference choice is not required.

(7) Everyone shall follow controlled hunt application procedures and regulations as described in OAR division 60.

(8) The number of landowner preference tags issued is based upon a landowner's acreage. Landowner Preference tags shall be allocated by the following minimum acreage requirements: [Table not included. See ED. NOTE.]

(9) Landowner preference tags for the hunting of deer or elk may be issued to any person of the landowner's choosing, and shall be used for the taking of antlerless animals except as described in OAR 635-075-0005(10). Season dates of the transferred landowner preference tags shall be the same dates as the original tag.

(10) Landowner preference tags for the hunting of antlered deer or elk may be issued to a person of the landowner's choosing who is not a member of the landowner's, partner's, or stockholder's immediate as follows:

(a) A landowner who is issued only one tag may not transfer that tag.

(b) A landowner who is issued two or more tags may transfer not more than 50 percent of the tags to a person who is not an immediate family member as defined in ORS 496.146(4). If calculation of the number of tags eligible for transfer under the provisions of this paragraph results in a fraction, the Commission shall round up the number of tags to the next whole number.

(11) A landowner who is qualified to receive landowner hunting preference tags may request two additional tags for providing public access and/or two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. These tags may not be applied to the options as defined in OAR 635-075-0005(8).

(12) No one shall receive both a controlled hunt tag and a landowner preference tag for the same type of hunt. Landowner hunting preference tags shall not be issued to any person successful in the controlled hunt drawing for the same type of hunt.

(13) Landowner preference tags, except as described in OAR 635-075-0007, 635-075-0010, and 635-075-0015 shall only be issued from the headquarters office of the Department following the controlled hunt drawings.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 14-1994(Temp), f. & cert. ef. 3-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2008, f. & cert. ef. 10-14-08; DFW 42-2009(Temp), f. 5-4-09, cert. ef 5-5-09 thru 10-31-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 19-2013(Temp), f. & cert. ef. 3-11-13 thru 9-6-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-075-0010
Hunting Area Allowed With Landowner Hunting Preference Tags

(1) A landowner preference tag authorizes the recipient to hunt only on those lands owned and registered in the Landowner Preference Program by the landowner, and meeting the minimum acreage requirements for that hunt, during the season dates for which the tag is valid, except as provided for in OAR 635-075-0010(4) and (5).

(2) Landowner hunting preference tags are valid on the landowner's registered property in other controlled hunt areas provided the species, bag limits, and season dates are the same, and the landowner's property in that area either:

(a) Meets the minimum acreage requirements for that hunt; or

(b) is contiguous to other property owned and registered by the landowner that, if added together, would meet the minimum acreage requirements for that hunt.

(3) A landowner receiving a landowner preference controlled buck deer hunt or controlled elk hunt tag may not hunt in any other controlled or general buck deer or elk season, except as provided in OAR division 090.

(4) When a landowner is qualified under landowner preference rules adopted by the Commission and the landowner or an immediate family member receives a deer or elk controlled hunt tag for that unit and has not harvested an animal, the landowner or immediate family member may use that tag to take an antlerless deer, except for white-tailed deer in Western Oregon, or elk before, during, or after the hunting season for which the tags are valid, when approved by the Department, to alleviate damage that is presently occurring to the landowner's property.

(5) Each unfilled landowner preference deer tag may be transferred and used to take two antlerless animals, except for white-tailed deer in Western Oregon, before, during or after the hunting season for which the tags are valid, when approved by the Department, to alleviate damage that

is presently occurring to the landowner's property in accordance with the following criteria:

(a) Transfer must be done by an authorized representative of the Department for no charge;

(b) Tag(s) is/are to be transferred to someone of the landowner's choice;

(c) No more than one tag may be transferred to any one person;

(d) Each tag may only be transferred once;

(e) Tags shall be issued for a period of no more than 30 days from the date of issuance, and end no later than March 31. A Department representative may reauthorize an unfilled tag to the same person for an additional 30 days if damage is presently occurring;

(f) Persons who have been successful in harvesting a buck and/or antlerless deer in a general and/or controlled hunt season (excluding "leftover" tags) are also eligible to receive one damage landowner preference deer tag in a fiscal year of July through June;

(g) Department personnel shall collect the appropriate fee for the second tag at time of transfer;

(6) Landowner preference pronghorn antelope tags may only be used during the authorized hunt season.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 5-1995, f. & cert. ef. 1-23-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-075-0020
Landowner Hunting Preference Tags in Special Seasons

(1)(a) Landowner hunting preference tags are not available for the long duration youth elk hunts (August 1–December 31) or the Melrose 223T (August 1–March 31, 2015) youth elk hunt.

(b) Landowner preference tags for North Warner Hunt 174A shall be limited to 39 tags and landowner preference tags for the Maury Unit Hunt 136 shall be limited to 84 tags.

(c) During deer hunts 141C, 142B, 154C, 156R, 165R, 168R2 and 170R3, and controlled elk hunts with a bag limit of spike or better in units where the usual bag limit for bull elk is spike only, landowner hunting preference tags shall be limited to five tags or 10 percent of the total controlled hunt tags whichever is greater; the bag limit for these elk tags shall be spike or better.

(2) If landowner preference tags remain from the controlled hunts described in 635-075-0020(1)(b) or (1)(c) after the game mammal controlled hunt drawing, the Department will issue remaining tags to qualified landowners in the following manner:

(a) The tags shall be issued on a first-come, first-served basis.

(b) The Department will set the time and date for the sale of the tags.

(c) Tags issued are additional tags. A qualified landowner may purchase only one first-come, first-served tag per hunt series. Such a tag may be for the landowner or for someone other than the landowner listed on their tag distribution form.

(d) For the purposes of OAR 635-075-0020(2), "qualified landowner" is a landowner who registered their land through the landowner preference program for the Wildlife Management Unit which includes the controlled hunt and who has a current tag distribution form filed with the Department.

(3) A hunter who received a tag of his or her choice through the original game mammal controlled hunt drawing process may exchange that tag for a remaining tag in the first-come, first-served process while tags remain available. Tag purchases and exchanges may be obtained only through ODFW Salem Headquarters and must be made before the start of the seasons for which the tags are issued. The tag being exchanged shall not be reissued.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.151 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.151 & 496.162
Hist.: FWC 10-1994, f. & cert. ef. 2-24-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 4-2003, f. 1-17-03, cert. ef. 4-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15

635-075-0022
Landowner Hunting Preference Tags for Mule Deer

(1) This rule further implements HB 2027A whereby the 2013 Legislative Assembly directed the Department through the commission to specify a formula that bases the number of landowner preference tags available for mule deer on the management, research, and habitat needs set forth in the wildlife management plan for mule deer.

(2) For purposes of this rule, the population management objectives (MOs) for each wildlife management unit that were adopted by the commission in June 2005 are considered representative of the management, research, and habitat needs for mule deer.

(3) The formula to determine the number of landowner hunting preference tags available for buck deer in a unit is as follows:

(a) In those wildlife management units where the estimated mule deer population is less than 100% of the established population management objective, the number of landowner hunting preference tags available for buck deer in that unit may be limited to five tags or 10 percent of the total controlled buck tags authorized for the public for each hunt in that unit by the commission, whichever is greater.

(b) In those wildlife management units where the estimated mule deer population is equal to or more than 100% of the established population management objective, the number of landowner hunting preference tags available for buck deer in that unit may be issued based upon a landowner's acreage as set forth in 635-075-0005 (8).

(4) For the purposes of OAR 635-075-0022(3), "qualified landowner" is a landowner who registered their land through the landowner preference program for the Wildlife Management Unit which includes the controlled hunt and who has a current tag distribution form filed with the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 1-2015, f. & cert. ef. 1-6-15

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Rule Caption: Amend rule to extend hunt season for Rocky Mountain Elk Controlled Rifle Hunt 251D
Adm. Order No.: DFW 2-2015(Temp)
Filed with Sec. of State: 1-7-2015
Certified to be Effective: 1-7-15 thru 6-30-15
Notice Publication Date:
Rules Amended: 635-071-0010
Subject: Currently 2015 Oregon Big Game Regulations incorrectly list the open season dates for the S Sumpter 251D controlled antlerless elk hunt as from October 17–October 31, 2015; the correct ending date should be December 31, 2015. This rule amendment would extend the ending date of Hunt 251D to December 31, 2015; the opening date is not changed.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-071-0010
Controlled Rocky Mountain Antlerless Elk Rifle Hunts

Notwithstanding the provisions of the 2015 Oregon Big Game Regulations: The season listed on page 57 for the S Sumpter (251D) Controlled Rocky Mountain Antlerless Elk Hunt is extended to December 31, 2015.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 37-1982, f. & ef. 6-25-82; FWC 28-1983, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 76-1985(Temp), f. & ef. 12-6-85; FWC 71-1985, f. & ef. 11-8-85; FWC 35-1986, f. & ef. 8-7-86; FWC 45-1987, f. & ef. 7-6-87; FWC 42-1988, f. & cert. ef. 6-13-88; FWC 69-1989, f. & cert. ef. 8-15-89; FWC 115-1989(Temp), f. & cert. ef. 11-16-89; FWC 61-1990, f. & cert. ef. 6-21-90; FWC 116-1990(Temp), f. & cert. ef. 10-11-90; FWC 64-1991, f. & cert. ef. 6-24-91; FWC 115-1991, f. & cert. ef. 9-30-91; FWC 49-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 63-1994(Temp), f. & cert. ef. 9-13-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 127-2013(Temp), f. & cert. ef. 11-5-13 thru 12-1-13; Administrative correction, 12-19-13; DFW 2-2015(Temp), f. & cert. ef. 1-7-15 thru 6-30-15

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Rule Caption: Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.
Adm. Order No.: DFW 3-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-13-15
Notice Publication Date: 12-1-2014
Rules Amended: 635-006-0232

Subject: Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-006-0232
Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2014 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:
(A) Anchovy, Northern $0.05 (2013 price).
(B) Cabezon $3.51.
(C) Carp $0.50 (2006 price).
(D) Cod, Pacific $0.55.
(E) Flounder, arrowtooth $0.09.
(F) Flounder, starry $0.90.
(G) Greenling $4.53.
(H) Grenadier $0.06.
(I) Hagfish $0.81.
(J) Hake, Pacific (Whiting) $0.10.
(K) Halibut, Pacific $5.59.
(L) Herring, Pacific $0.21 (2012 price).
(M) Lingcod $1.29.
(N) Mackerel, jack $0.05; Pacific $0.08.
(O) Opah $2.98 (2008 price).
(P) Pacific ocean perch, $0.40.
(Q) Pollock, Walleye $0.07 (2013 price).
(R) Rockfish:
(i) Black, $2.24.
(ii) Blue, $1.39.
(iii) Canary, $0.51.
(iv) Darkblotched, $0.46.
(v) Black and yellow, $5.68.
(vi) Brown, $4.75.
(vii) China, $6.00.
(viii) Copper, $3.47.
(ix) Gopher, $4.00.
(x) Grass, $6.73.
(xi) Quillback, $3.77.
(xii) Shelf, $0.32.
(xiii) Shortbelly, using trawl gear $0.22, using line and pot gear $1.96 (2008 price).
(xiv) Slope, using trawl gear, $0.55, using line and pot gear $1.04.
(xv) Tiger, $3.71.
(xvi) Vermilion, $1.83.
(xvii) Widow, $0.44.
(xviii) Yelloweye, using trawl gear $0.53, using line and pot gear $1.00.
(xix) Yellowtail, $0.53.
(S) Sablefish, $2.44.
(T) Salmon eggs, $2.44.
(U) Salmon, Chinook, ocean mixed size, $5.71.
(V) Salmon, coho, ocean dressed weight: mixed size, $2.00.
(W) Salmon, pink, ocean, dressed weight: ungraded, $1.35 (2013 price).
(X) Sanddab, Pacific $0.50.
(Y) Sardine, Pacific $0.11.
(Z) Scuplin, buffalo $0.83.
(AA) Shad, American:
(i) Coast, ungraded, midwater trawl, $0.22 (2012 price).
(ii) Columbia, ungraded, gillnet, setnet, and dipnet, $0.07.
(BB) Shark, blue $0.50 (2013 price), Pacific sleeper $0.62 (2000 price), shortfin mako $1.80 (2012 price), sixgill $0.05 (2007 price), soupfin $0.20 (2012 price), spiny dogfish $0.02, scalloped hammerhead $0.12 (2001 price), silky $0.18 (2001 price), thresher dressed weight $1.50 (1995 price) and round weight $0.60 (2012 price), and other species $0.02.
(CC) Skate, longnose $0.40.
(DD) Skates and Rays $0.33.
(EE) Skates, unsp. $0.40.
(FF) Smelt, Eulachon (Columbia River), $2.86 (2012 price) and other species $0.20 (2010 price).
(GG) Sole, butter $0.03, curlfin (turbot) $0.28, Dover $0.45, English $0.31, flathead $0.28, petrale $1.13, rex $0.36, rock $0.33 and sand $0.73.
(HH) Steelhead $2.18.
(II) Sturgeon, green $0.98 (2009 price) and white $1.35.
(JJ) Surfperch $5.75.
(KK) Swordfish $4.00 (2008 price).
(LL) Thornyhead (Sebastolobus), longspine $0.35 and shortspine $0.69.
(MM) Tuna, albacore $1.26, bluefin $5.72, bigeye $4.00 (2008 price), and yellowfin $2.00 (2011 price).
(NN) Walleye $1.00.
(OO) Wolf-eel $2.25.
(PP) Wrymouth $0.18.
(b) CRUSTACEANS:
(A) Crab: box $1.28 (2012 price), Dungeness bay $5.52 and ocean $3.47, rock $1.60 (2012 price) and Tanner $1.00 (2012 price).
(B) Crayfish $2.54.
(C) Shrimp: brine $1.00, coonstripe $3.56 (2012 price), ghost (sand) $2.43, mud $1.64, pink $0.58 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot $12.53.
(D) Water flea (Daphnia) $0.65 (2002 price).
(c) MOLLUSKS:
(A) Abalone, flat $21.09 (2008 price).
(B) Clams: butter $0.93, cockle $0.68, gaper $0.77, Manila littleneck $2.00 (2008 price), Nat. littleneck $0.63 (2012 price), razor $2.93, and softshell $0.50 (2009 price).
(C) Mussels, ocean $0.90.
(D) Octopus $1.40.
(E) Scallop, rock $0.70 (2005 price).
(F) Scallop, weathervane dressed weight (shucked) $5.73 (2002 price) and round weight $0.55 (2002 price).
(G) Squid, market $0.20.
(H) Squid, other species $0.13.
(d) OTHER INVERTEBRATES:
(A) Jellyfish $10.00 (2004 price).
(B) Sea anemone $0.83.
(C) Sea cucumber $1.00.
(D) Sea urchin, red $0.61 and purple $0.30 (2004 price).
(E) Sea stars $1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds $300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.720
Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12; DFW 11-2012, f. & cert. ef. 2-7-12; DFW 3-2013, f. & cert. ef. 1-14-13; DFW 1-2014, f. & cert. ef. 1-13-14; DFW 3-2015, f. & cert. ef. 1-13-15

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Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish Rules.
Adm. Order No.: DFW 4-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-15-15
Notice Publication Date: 12-1-2014
Rules Amended: 635-004-0215, 635-004-0350, 635-004-0355, 635-006-0209, 635-006-0215, 635-039-0090
Rules Repealed: 635-004-0355(T), 635-006-0209(T)
Subject: These amended rules, as determined justified, will establish annual groundfish management measures and harvest limits for 2015 commercial and sport groundfish fisheries. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-004-0215
Definitions

As used in division 4 regulations:

(1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.

(2) "Board" means the Commercial Fishery Permit Board.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Coastal Pelagic Species" means all species of ocean food fish and shellfish defined as Coastal Pelagic Species in the Fishery Management Plan for U.S. West Coast Fisheries for Coastal Pelagic Species and in the Federal Coastal Pelagic Species Regulations, Title 50, Part 660, and include:

(a) Jack mackerel (Trachurus symmetricus);

(b) Jack smelt (Atherinopsis californiensis);

(c) Krill (all species in order Euphausiacea);

(d) Market squid (Loligo opalescens);

(e) Northern anchovy (Engraulis mordax);

(f) Pacific herring (Clupea harengus pallasi);

(g) Pacific mackerel (Scomber japonicus); and

(h) Pacific sardine (Sardinops sagax).

(5) "Commercial harvest cap" means the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries.

(6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.

(7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(9) "Department" means the State Department of Fish and Wildlife.

(10) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(11) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following pieces of equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(12) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.

(13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, set net, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl net or gillnet and includes all types of purse seines;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(14) "Fishing trip" means a period of time between landings when fishing is conducted.

(15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, pursuant to ORS 506.036.

(16) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 and includes:

(a) All species of rockfish, thornyheads, and scorpionfish that occur off Washington, Oregon, or California (genera Sebastes, Scorpaena, Scorpaenodes, and Sebastolobus);

(b) Arrowtooth flounder (Atheresthes stomias);

(c) Big skate (Raja binoculata);

(d) Butter sole (Isopsetta isolepis);

(e) Cabezon (Scorpaenichthys marmoratus);

(f) California skate (Raja inornata);

(g) Curlfin sole (Pleuronichthys decurrens);

(h) Dover sole (Microstomus pacificus);

(i) English sole (Parophrys vetulus);

(j) Finescale codling (Antimora microlepis);

(k) Flathead sole (Hippoglossoides elassodon);

(l) Kelp greenling (Hexagrammos decagrammus);

(m) Leopard shark (Triakis semifasciata);

(n) Lingcod (Ophiodon elongatus);

(o) Longnose skate (Raja rhina);

(p) Pacific cod (Gadus macrocephalus);

(q) Pacific rattail (Coryphaenoides acrolepis);

(r) Pacific sanddab (Citharichthys sordidus);

(s) Pacific whiting (Merluccius productus);

(t) Petrale sole (Eopsetta jordani);

(u) Ratfish (Hydrolagus colliei);

(v) Rex sole (Glyptocephalus zachirus);

(w) Rock sole (Lepidopsetta bilineata);

(x) Sablefish (Anoplopoma fimbria);

(y) Sand sole (Psettichthys melanostictus);

(z) Soupfin shark (Galeorhinus zyopterus);

(aa) Spiny dogfish (Squalus acanthias);

(bb) Starry flounder (Platichthys stellatus); and

(cc) Starry rockfish (Sebastes constellatus).

(17) "Harvest guideline" means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery.

(18) "Highly Migratory Species" means all species of ocean food fish defined as highly migratory species in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species and in the Federal Highly Migratory Species Regulations, Title 50, Part 660, and includes:

(a) Bigeye thresher shark (Alopias superciliosus);

(b) Bigeye tuna (Thunnus obesus);

(c) Blue shark (Prionace glauca);

(d) Common thresher shark (Alopias vulpinus);

(e) Common Mola (Mola mola);

(f) Dorado (Coryphaena hippurus);

(g) Escolar (Lepidocybium flavobrunneum);

(h) Lancetfishes (Alepisauridae species);

(i) Louvar (Luvarus imperialis);

(j) North Pacific albacore tuna (Thunnus alalunga);

(k) Northern bluefin tuna (Thunnus thynnus);

(l) Pacific swordfish (Xiphias gladius);

(m) Pelagic sting ray (Dasyetis violacea);

(n) Pelagic thresher shark (Alopias pelagicus);

(o) Shortfin mako shark (Isurus oxyrinchus);

(p) Skipjack tuna (Katsuwonus pelamis);

(q) Striped marlin (Tetrapturus audax);

(r) Wahoo (Acathocybium solandri); and

(s) Yellowfin tuna (Thunnus albacares).

(19) "Inland waters" means all waters of the state except the Pacific Ocean.

(20) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.

(21) "Land, landed, or landing" means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish aboard the vessel are counted as part of that landing, except:

(A) Anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and

(B) For vessels participating in the federal trawl rationalization program, the portion of catch that is intended to be delivered to Washington or California is not considered part of that landing.

(b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(22) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions such as a dive step or platform.

(23) "Length, total" of a fish is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(24) "Nearshore species" includes (See ORS 506.011):

(a) Black and yellow rockfish (Sebastes chrysolmelas);

(b) Brown Irish lord (Hemilepidotus spinosus);

(c) Brown rockfish (Sebastes auriculatus);

(d) Buffalo sculpin (Enophrys bison);

(e) Cabezon (Scorpaenichthys marmoratus);

(f) Calico rockfish (Sebastes dalli);

(g) China rockfish (S. nebulosus);

(h) Copper rockfish (S. caurinus);

(i) Gopher rockfish (S. carnatus);

(j) Grass rockfish (S. rastrelliger);

(k) Kelp greenling (Hexagrammos decagrammus);

(l) Kelp rockfish (Sebastes atrovirens);

(m) Olive rockfish (S. serranoides);

(n) Painted greenling (Oxylebius pictus);

(o) Quillback rockfish (Sebastes maliger);

(p) Red Irish lord (Hemilepidotus hemilepidotus);

(q) Rock greenling (Hexagrammos lagocephalus);

(r) Tiger rockfish (Sebastes nigrocinctus);

(s) Treefish (S. serriceps);

(t) Vermillion rockfish (S. miniatus); and

(u) White spotted greenling (Hexagrammos stelleri).

(25) "Ocean food fish" means all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(26) "Other nearshore rockfish" includes:

(a) Black and yellow rockfish (Sebastes chrysolmelas);

(b) Brown rockfish (S. auriculatus);

(c) Calico rockfish (S. dalli);

(d) China rockfish (S. nebulosus);

(e) Copper rockfish (S. caurinus);

(f) Gopher rockfish (S. carnatus);

(g) Grass rockfish (S. rastrelliger);

(h) Kelp rockfish (S. atrovirens);

(i) Olive rockfish (S. serranoides);

(j) Quillback rockfish (S. maliger); and

(k) Treefish (S. serriceps).

(27) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(28) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.

(29) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(30) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting.

(31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.

(32) "Rockfish" includes all species in the following genera:

(a) Sebastes; and

(b) Sebastolobus.

(33) "Salmon" means all anadromous species of salmon, including but not limited to:

(a) Oncorhynchus gorbuscha, commonly known as humpback, humpies or pink salmon.

(b) Oncorhynchus keta, commonly known as chum or dog salmon.

(c) Oncorhynchus kisutch, commonly known as coho or silver salmon.

(d) Oncorhynchus nerka, commonly known as sockeye, red or blueback salmon.

(e) Oncorhynchus tshawytscha, commonly known as Chinook salmon.

(34) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS Chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(35) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(36) "Smelt" means all species in the family Osmeridae.

(37) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(38) "Transport" means transport by any means, and includes offer or receive for transportation.

(39) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

(A) Period 1: January through February;

(B) Period 2: March through April;

(C) Period 3: May through June;

(D) Period 4: July through August;

(E) Period 5: September through October; and

(F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in seven (7) consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(40) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual's control.

(41) "Unlawful to buy" means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.

(42) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes, and has the same meaning as 'boat' as specified in ORS 506.006.

(43) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(44) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.

(45) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

(46) "Week" means the period beginning at 00:01 hours local time on Sunday and ending at 24:00 hours local time on the following Saturday.

Stat. Auth.: ORS 496.138, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, 506.109 & 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-004-0020, DFW 75-2012, f. 6-28-12; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

635-004-0350
Harvest Guidelines and Landing Caps

(1) Upon attainment of a harvest guideline in the Black Rockfish, Blue Rockfish, and Nearshore Fishery, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.

(2) The following commercial harvest guidelines include the combined landings and other fishery related mortality by all Oregon commercial fisheries in a single calendar year:

(a) Black rockfish: 139.2 metric tons;

(b) Cabezon: 30.2 metric tons; and

(c) Blue rockfish and other nearshore rockfish combined: 10.4 metric tons.

(3) The following commercial harvest guidelines include landings by all Oregon commercial fisheries in a single calendar year: Greenling, 23.4 metric tons.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

635-004-0355
Trip Limits

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery.

(2) Vessels with a Black Rockfish / Blue Rockfish / Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following cumulative trip limits:

(a) Black rockfish:

(A) 1200 pounds in period 1;

(B) 1400 pounds in period 2;

(C) 1700 pounds in period 3;

(D) 1600 in period 4;

(E) 1400 pounds in period 5;

(F) 1000 pounds in period 6; and

(b) 15 pounds of blue rockfish in each period.

(3) For all other nearshore species, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following cumulative trip limits in each period:

(a) 100 pounds of other nearshore rockfish combined;

(b) 1,500 pounds of cabezon; and

(c) 300 pounds of greenling species.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 79-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 12-27-12; DFW 118-2012(Temp), f. 9-10-12, cert. ef. 9-11-12 thru 12-31-12; DFW 141-2012(Temp), f. 10-31-12, cert. ef. 11-1-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 99-2013(Temp), f. & cert. ef. 9-9-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 101-2014(Temp), f. 7-23-14, cert. ef. 8-1-14 thru 12-31-14; DFW 147-2014(Temp), f. & cert. ef. 10-13-14 thru 12-31-14; DFW 164-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 1-16-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

635-006-0209
Sorting Required

(1) It is *unlawful* to fail to sort into the categories listed in sections (2) and (3) of this rule, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, quota, harvest guideline, harvest cap, size limit, scientific sorting designation, Optimum Yield (OY) or Annual Catch Limit (ACL).

(2) Federal sorting requirements must be met for the following sectors:

(a) Trawl fisheries pursuant to 660.130(d), subpart D of the Code of Federal Regulations;

(b) Limited Entry Fixed Gear groundfish fisheries pursuant to 660.230(c), subpart E of the Code of Federal Regulations; and

(c) Open Access Fixed Gear groundfish fisheries pursuant to 660.330(c), subpart F of the Code of Federal Regulations.

(3) Nearshore species must be sorted into the following categories:

(a) Black rockfish;

(b) Black and Yellow rockfish;

(c) Blue rockfish;

(d) Brown rockfish;

(e) Cabezon;

(f) Calico rockfish;

(g) China rockfish;

(h) Copper rockfish;

(i) Gopher rockfish;

(j) Grass rockfish;

(k) Greenling;

(l) Kelp rockfish;

(m) Olive rockfish;

(n) Quillback rockfish;

(o) Tiger rockfish;

(p) Treefish;

(q) Vermilion rockfish.

(4) Blackspotted rockfish, rougheye rockfish, and shortraker rockfish must be sorted into the following categories:

(a) Blackspotted rockfish and rougheye rockfish;

(b) Shortraker rockfish.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 1-16-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

635-006-0215
Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. When landed in a dressed condition, the following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.30

(B) Halibut:

(i) Gilled and gutted 1.15

(ii) Gilled, gutted, and headed 1.35

(C) Sablefish, gutted and headed 1.60

(D) Pacific whiting:

(i) Fillet 2.86

(ii) Headed and gutted 1.56

(iii) Headed and gutted with tail removed 2.0

(E) Thresher shark 2.0

(F) Lingcod:

(i) Gilled and gutted 1.1

(ii) Gilled, gutted and headed 1.5

(G) Spot prawn, tails 2.24

(H) Rockfish (including thornyheads), except Pacific Ocean Perch:

(i) Gilled and gutted 1.14

(ii) Gutted and headed 1.75

(iii) Gutted and headed, with collarbone still attached to body (western cut) 1.66

(iv) Gutted and headed, with collarbone removed from body (eastern cut) 2.0

(I) Pacific Ocean Perch:

(i) Gilled and gutted 1.14

(ii) Gutted and headed 1.6

(J) Pacific Cod, gutted and headed 1.58

(K) Dover sole, English sole, and "other flatfish" as defined in Title 50 of the Code of Federal Regulations, part 660 Subpart C, gutted and headed 1.53

(L) Petrale sole, gutted and headed 1.51

(M) Arrowtooth flounder, gutted and headed 1.35

(N) Starry flounder, gutted and headed 1.49

(O) Groundfish, glazed:

(i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-006-0209 when there are 60 or greater individuals of a category in a single landing as follows:

(I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;

(II) Completely remove glaze from individual fish making up the sample;

(III) Re-weigh the sample to obtain the non-glazed weight;

(IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;

(V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;

(VI) Documentation of this calculation must be retained with the dock receiving ticket.

(ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-006-0209 in a single landing.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent.

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5.00 percent.

(C) Effective January 1, 2010, all other food fish (except tuna, as defined by ORS 508.505), 2.25 percent.

(D) All tuna (as defined by ORS 508.505), 1.09 percent.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of $5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129 & 508.530

Stats. Implemented: ORS 506.109, 506.129, 508.535, 508.505 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 68-2013(Temp), f. & cert. ef. 7-3-13 thru 12-30-13; Administrative correction, 2-5-14; DFW 106-2014(Temp), f. 7-30-14, cert. ef. 8-1-14 thru 12-31-14; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

635-039-0090
Inclusions and Modifications

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.

(a) The following sport harvest guidelines include the combined landings and other fishery related mortality by the Oregon sport fishery in a single calendar year:

(A) Black rockfish, 440.8 metric tons.

(B) Cabezon, 16.8 metric tons.

(C) Blue rockfish and other nearshore rockfish combined, 26 metric tons.

(b) The following sport harvest guidelines include total landings in the Oregon sport ocean boat fishery in a single calendar year: Greenling, 5.2 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastrelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serriceps).

(4) In addition to the regulations for Marine Fish in the **2015 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2015:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2015 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than three may be a blue rockfish, no more than one may be a canary rockfish, and no more than one may be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) China rockfish;

(C) Copper rockfish;

(D) Quillback rockfish; and

(E) Cabezon from January 1 through June 30.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (4)(a) and (4)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2014 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15

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Rule Caption: Prohibition of Canary Rockfish Retention In Recreational Fisheries.

Adm. Order No.: DFW 5-2015(Temp)

Filed with Sec. of State: 1-13-2015

Certified to be Effective: 1-15-15 thru 7-13-15

Notice Publication Date:

Rules Amended: 635-039-0090

Subject: This amended rule re-establishes a prohibition on canary rockfish retention in recreational fisheries in-order-to maintain consistency between state and federal regulations until final federal regulations for all 2015-2016 groundfish fisheries are implemented, expected in March of 2015. On January 9, 2015, the Oregon Fish and Wildlife Commission adopted permanent Oregon Administrative Rules allowing recreational fishermen to retain one canary rockfish per day as one part of a rulemaking package for 2015-2016 groundfish fisheries. However, the National Marine Fisheries Service has announced that implementation of federal regulations governing all 2015-2016 groundfish fisheries will be delayed beyond their original target date of January 1, 2015.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-039-0090

Inclusions and Modifications

(1) The **2015 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2015 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.

(a) The following sport harvest guidelines include the combined landings and other fishery related mortalit by the Oregon sport fishery in a single calendar year:

(A) Black rockfish, 440.8 metric tons.

(B) Cabezon, 16.8 metric tons.

(C) Blue rockfish and other nearshore rockfish combined, 26 metric tons.

(b) The following sport harvest guidelines include total landings in the Oregon sport ocean boat fishery in a single calendar year: Greenling, 5.2 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serriceps).

(4) In addition to the regulations for Marine Fish in the **2015 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2015:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2015 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than three may be blue rockfish and no more than one may be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) China rockfish;

(C) Copper rockfish;

(D) Quillback rockfish;

(E) Cabezon from January 1 through June 30; and

(F) Canary rockfish.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (4)(a) and (4)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2014 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15; DFW 5-2015(Temp), f. 1-13-15, cert. ef. 1-15-15 thru 7-13-15

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Rule Caption: Amended Hunting Agreement for 2014 Between ODFW and Warm Springs Tribe
Adm. Order No.: DFW 6-2015(Temp)
Filed with Sec. of State: 1-15-2015
Certified to be Effective: 1-15-15 thru 2-25-15
Notice Publication Date:
Rules Adopted: 635-043-0151
Rules Suspended: 635-043-0151(T)
Subject: Amended rule between Warm Springs Tribe and ODFW regarding legal authority to take big game species for the 2014 hunting season.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-043-0151
Warm Springs Hunting Agreement for 2014

Warm Springs Tribal members are authorized to hunt and trap wildlife under the terms and conditions of the "Amended Hunting Agreement for 2014 Between the Oregon Department of Fish and Wildlife and the Warm Springs Tribe" dated January 9, 2015, incorporated herein by reference. This rule expires on February 25, 2015.

Stat. Auth.: ORS 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 496.012, 496.138 & 496.162

Hist.: DFW 127-2014(Temp), f. & cert. ef. 8-29-14 thru 2-25-15; DFW 6-2015(Temp), f. & cert. ef. 1-15-15 thru 2-25-15

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Department of Geology and Mineral Industries
Chapter 632

Rule Caption: Rulemaking Amendments to OAR 632-030-0025 Relating to Mined Land Reclamation and Requirements for Imported Fill.
Adm. Order No.: DGMI 1-2015
Filed with Sec. of State: 1-7-2015
Certified to be Effective: 1-7-15
Notice Publication Date: 11-1-2014
Rules Amended: 632-030-0025
Subject: The amendments to OAR 632-030-025 requires that all fill material used as reclamation backfill or other subsurface placement must meet the Oregon Department of Environmental Quality definition of clean fill as provided in 340-093-0030 or the use must be specifically allowed by Department of Environmental Quality by rule, permit or other written authorization. Additionally, these amendments to the rule would require a reclamation site using fill material to have a written plan that has been approved by the Department, showing locations for stockpiling and permanent placement. The plan provides monitoring of the quality and quantity of the fill material. The quality, quantity and location of fill material used on the site must be consistent with local land use plans and regulations. Documentation showing compliance with the approved plan and this subsection must be provided to the Department upon request.
Rules Coordinator: Gary Lynch—(541) 967-2053

632-030-0025
Requirements for an Operating Permit and Reclamation Plan

(1) An applicant for an operating permit shall submit a reclamation plan to the Department as required in OAR 632-030-0020. The information that the Department may require in a reclamation plan includes, but is not limited to, the following:

(a) The name(s) and address(es) of all owners of the surface estate and mineral estate;

(b) The legal structure (e.g., corporation, partnership, individual) of the applicant;

(c) The name and mailing address for correspondence;

(d) The name and mailing address of the applicant's resident agent;

(e) A description of the present land use and planned beneficial use of the site following mining. The applicant must demonstrate that the planned beneficial use is compatible with the affected local government's acknowledged comprehensive plan and land-use regulations;

(f) The identification and characterization of the soils present, including any areas that have wetlands and hydric soils;

(g) The identification of any fish or wildlife species that may be present that is listed or proposed for listing by either federal or state as sensitive, threatened, or endangered or otherwise may require buffers for protection;

(h) A general list of equipment to be used and a description of mining methods including interim slope angles during the life of the mine;

(i) Provisions for the backfilling, recontouring, decompaction, topsoil replacement, seedbed preparation, mulching, fertilizing, selection of plant species, seeding or planting rates, weed control, and schedules;

(j) The characterization of the ground and surface water based on available wells, drill logs, location of springs, and surface drainages within one mile of the proposed operation may be required. The Department may also require the collection and submission of additional hydrologic data to evaluate the mine development and reclamation plan;

(k) Stream hydrology and other hydrologic information for floodplain sites;

(l) Ground water characterization and/or measures to prevent significant adverse impacts to surface or ground water quantity or quality;

(m) Other baseline information necessary to evaluate the mine development and reclamation plan;

(n) A list and procedures for the handling and use of any materials toxic to plant and/or animal life, acid forming materials or radioactive material which will be at the mine site. The Department may also require an analysis of process water, reagents, wastes, or other materials involved in the mining and processing operations;

(o) Procedures for the salvage, storage, and replacement of topsoil or acceptable substitute. The Department may require the applicant to submit a chemical and physical analysis of the seedbed and subsoil;

(p) Procedures for the stable storage of overburden. This may include a description of the pre-mine topography, method for placement of overburden, height of lifts, compaction standards, final height, and slope configurations, and/or a geotechnical design and construction plans for a storage pile or fill proposed as a final reclamation feature;

(q) Provisions for adequate setbacks to protect adjacent property and public safety;

(r) Provisions to protect and maintain access to utilities when a utility company right-of-way exists;

(s) Visual screening of the proposed operation may be required when the operating area is visible from a public road or residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing, berms, setbacks, or buffer strips along the property boundary;

(t) Procedures for surface water, stream, and floodplain protection and operational and post-mine hydrologic controls may include, but are not limited to:

(A) Procedures to protect surface water quality and to control erosion include the following:

(i) Rock lined ditches, rock lined haul roads, or work areas;

(ii) Detention ponds and sedimentation basins;

(iii) Rock check dams and grade control structures;

(iv) Temporary diversions;

(v) Flocculation systems and/or surface disposal systems;

(vi) Runoff and pond sizing calculations.

(B) Procedures to protect or reconstruct waterways or drainage patterns impacted by mine related disturbances or reclamation by the design and construction of a post-mine drainage control plan to convey storm water and surface water off the property in a manner that will provide long-term stability to the reclaimed land.

(C) Procedures to protect natural resources.

The Department may determine it is in the best interest of protection of natural resources and final reclamation to require procedures to integrate flood water passage plans, storm water controls, or fish ingress/egress plans at adjoining mine sites. Such a requirement by the Department is not considered a permit amendment.

(D) Procedures to promote final reclamation and floodplain stability or protection of streams, riparian buffers, and operational setbacks may require detailed engineering and planning for:

(i) Pond bank and channel bank weirs or other headcut protection plans;

(ii) Floodwater conveyance channels or structures;

(iii) Flood berms;

(iv) Protection of channel migration zone;

(v) Protection or stabilization of stream channel buffers.

(u) A proposed time schedule for surface mining and reclamation and a description of how concurrent reclamation, if applicable, will be accomplished during the life of mine.

(v) Additional steps planned to enhance fish or wildlife habitat or to create wetlands for sites where fish or wildlife habitat or wetland construction is part of the designated post-mining land use;

(w) Procedures for the removal or disposal or all equipment, refuse, structures, and foundations from the permit area except permanent structures that are part of an approved reclamation plan;

(x) Final slope configurations and how they will be stabilized;

(y) A plan for the control of noxious weeds may be required;

(z) Provisions to protect fish and wildlife species by providing operational setbacks;

(aa) Fish ingress/egress plans for floodplain sites; and

(bb) Procedures for placement of fill and protection of fill quality.

(A) All fill used as reclamation backfill or other subsurface placement must meet the Oregon Department of Environmental Quality definition of clean fill as provided in OAR 340-093-0030 or the use must be specifically allowed by Department of Environmental Quality by rule, permit or other written authorization.

(B) Fill material at a reclamation site must be used in accordance with a written fill plan approved by the Department or specific provisions in the approved reclamation plan. The fill plan or reclamation plan must show the locations for stockpiling and permanent placement of the fill material and provide for monitoring of the quality and quantity of the fill material. The quality, quantity and location of fill material used on the site must be consistent with local land use plans and regulations. Documentation showing compliance with the approved plan and this subsection must be provided to the Department upon request.

(cc) If the affected local government designates a post-mine land use or uses through a comprehensive plan amendment or zone change, or requires a conservation easement to be established after reclamation, the plan submitted to the Department must specifically address how the post-mine land use(s) will be established.

(2) In addition to the requirements set out in OAR 632-030-0015(2), the Department may require maps, aerial photographs, or design drawings of appropriate scale. Information that typically may be required on maps, aerial photographs or design drawings includes but is not limited to:

(a) Permit area boundary, property lines, and property line setbacks;

(b) Maximum extraction boundary delineating mine phases and reclamation sequence;

(c) Waste rock, rejects, overburden, and soil storage areas and stockpiles;

(d) Processing plant and location of existing or proposed visual screens;

(e) Ancillary facilities location;

(f) Haul roads;

(g) Typical pre- and post-mine cross sections and topographic plan views;

(h) Existing watercourses, including irrigation ditches, streams, rivers, and ponds;

(i) Setback and buffer strips for wetlands and stream drainages;

(j) Storm and/or wastewater control structures, ponds, and ditches;

(k) Location of any engineered structures or engineered fill;

(l) Reconstructed watercourses, ponds, and location of fish egress/ingress channels;

(m) Location of the 100-year FEMA floodplain boundary or a site-specific hydrologic study that identifies the 100-year floodplain boundary based on hydraulic modeling;

(n) Proposed and existing mine areas and backfill locations;

(o) Location of existing and proposed dikes and berms;

(p) Post-mining topography;

(q) Location of any well within 1,000 feet of permit boundary. Where dewatering is proposed, location of any well within 1,500 feet of permit boundary;

(r) Land-use authority boundary; and

(s) Nest setbacks, to the extent they limit mineral extraction, for eagles or other species specifically protected by city or county land-use conditions or state or federal laws.

(3) The applicant should contact the Department for recommendations regarding scale and amount of detail required. The applicant may be required to submit extra copies of materials to be circulated to other agencies.

(4) The applicant must provide proof of ownership of surface and mineral rights or document to the satisfaction of the Department that the requirements of ORS 517.790(3) are met.

Stat. Auth.: ORS 183.341, 197.180, 516.090(2)(a), 517.740 & 517.840(1)(d)
Stats. Implemented: ORS 517.790
Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 2-1986, f. 9-19-86, ef. 9-22-86; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 1-1992, f. & cert. ef. 6-17-92DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2009, f. & cert. ef. 5-15-09; DGMI 2-2014(Temp), f. & cert. ef. 9-10-14 thru 3-9-15; DGMI 1-2015, f. & cert. ef. 1-7-15

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

Rule Caption: Oregon Project Independence for Adults with Disabilities
Adm. Order No.: APD 38-2014
Filed with Sec. of State: 12-16-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Adopted: 411-032-0050
Rules Repealed: 411-032-0050(T)
Subject: The Department of Human Services (Department) is permanently adopting OAR 411-032-0050 to make permanent temporary rule language that became effective July 1, 2014. OAR 411-032-0050 establishes the policies that apply to the pilot project, which expands Oregon Project Independence (OPI) services to allow adults with physical disabilities in regionally diverse pilot locations access to OPI services. This rule sets out implementation, eligibility, and services offered through the pilot.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-032-0050
Pilot for Adults with Disabilities

This rule applies only until June 30, 2015.

(1) The purpose of this rule is to set out the policies that apply to the expansion of Oregon Project Independence services to adults with physical disabilities. The pilot allows the Department to study the potential to transition Oregon Project Independence to a statewide, age neutral, program that assesses and serves seniors and persons with physical disabilities based on their functional needs.

(2) "Disability" means, for the purposes of this rule, a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006, or in one or more of the instrumental activities of daily living defined in 411-015-0007.

(3) "Adult" means, for purposes of this rule, any person 19 to 59 years of age.

(4) OAR 411-032-0000 to 411-032-0044 apply to this pilot program, except as noted below:

(a) Authorized Services and Allowable Costs. Authorized services may not be available in all service areas. Authorized services for the pilot funds include home care supportive services, service coordination, and other services, including the following:

(A) Home care.
(B) Chore services.
(C) Assistive Technology.
(D) Personal care services.
(E) Adult day services.
(F) Registered nurse services.
(G) Home delivered meals.
(H) Services to support community caregivers and strengthen the natural support system of individuals.
(I) Evidence-based health promotion services.
(J) Options counseling.
(K) Assisted transportation options that allow individuals to live at home and access the full range of community resources.

(b) Eligibility.

(A) In order to qualify for authorized services under this pilot, an individual must:

(i) Be an adult with a disability;
(ii) Be a resident of a designated pilot area and seek services at that location;
(iii) Not be receiving Medicaid;
(iv) Meet the requirements of the long-term care services priority rules in OAR chapter 411, division 15.

(B) The Area Agencies on Aging must determine eligibility prior to an individual receiving authorized services.

(c) The fees described in OAR 411-032-0044(1)(a) do not apply to this pilot program.

Stat Auth: ORS 409.050, 410.070, 410.435
Stats Implemented: ORS 409.010, 410.410-410.480
Hist.: APD 19-2014(Temp), f. 6-26-14, cert. ef. 7-1-14 thru 12-28-14; APD 38-2014, f. 12-16-14, cert. ef. 12-28-14

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Rule Caption: ODDS — In-Home Support for Children with Intellectual or Developmental Disabilities
Adm. Order No.: APD 39-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Adopted: 411-308-0135
Rules Amended: 411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150
Rules Repealed: 411-308-0135(T), 411-308-0020(T), 411-308-0030(T), 411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T), 411-308-0100(T), 411-308-0120(T), 411-308-0130(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

Provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

Clarify that a child who accesses in home support through general fund eligibility must be to prevent out-of-home placement and to allow time for the transition into other Medicaid services, if eligible;

Account for changes in Medicaid service eligibility;

Clarify when a child may be exited from in-home supports and to reiterate the requirement for a Notification of Planned Action in the instance supports are terminated;

Require a plan to reduce or eliminate the need for children accessing in-home supports through general funds. The plan may include assisting the child to access waiver or Community First Choice services, if eligible;

Remove the sanctions for independent providers, provider organizations, and general business providers;

Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the proposed 1915(c) Home and Community-Based Services waiver;

Update provider types to reflect changes in the 1915(c) Home and Community-Based Services waiver;

Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-308-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs to partner with families and community partners in identifying and providing in-home support for children with intellectual or developmental disabilities. Supports are intended to maximize the independence of a child and engagement in a life that is fully integrated into the community. Supports are designed to increase the ability of a family to care for a child with an intellectual or developmental disability in the family home.

(2) In-home supports are also designed to prevent out-of-home placement or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the family home.

Stat. Auth.: ORS 409.050,430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 308:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Alternative Resources" mean possible resources for the provision of supports to meet the needs of a child. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(5) "Annual Plan" means the written summary a services coordinator completes for a child who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(6) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the child lives.

(7) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are purchased to provide support for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.

(8) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-308-0120.

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(10) "Behavior Consultant" means a contractor with specialized skills who conducts functional assessments and develops a Behavior Support Plan.

(11) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause the challenging behaviors of a child to become unnecessary and to change the behavior of the provider, adjust environment, and teach new skills.

(12) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of a child that prevents the child from accomplishing ADL, IADL, health related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(13) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(14) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(15) "Children's Intensive In-Home Services" mean the services described in:

(a) OAR chapter 411, division 300, Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(16) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(17) "Community Nursing Services" mean the nursing services described in OAR 411-308-0120 that focus on the chronic and ongoing health and safety needs of a child living in the family home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(18) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services.

(19) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department, the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(20) "CPMS" means the "Client Processing Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(21) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(22) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

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

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(25) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(26) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, the parent or a person selected by the parent to act on the behalf of the parent to 0conduct the employer responsibilities described in OAR 411-308-0135.

(27) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as service agreements; and

(d) Fiscal intermediary services.

(28) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(29) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(30) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(31) "Entry" means admission to a Department-funded developmental disability service.

(32) "Environmental Modifications" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health,

welfare, and safety of a child in the family home, or that are necessary to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(33) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-308-0120 that are made to the exterior of a family home as identified in the ISP for a child to ensure the health, welfare, and safety of the child or to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(34) "Exit" means termination or discontinuance of in-home support.

(35) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for in-home supports as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(36) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home may include a foster home funded by Child Welfare.

(37) "Family Training" means the training services described in OAR 411-308-0120 that are provided to a family to increase the capacity of the family to care for, support, and maintain a child in the family home.

(38) "Fiscal Intermediary" means a person or entity that receives and distributes IHS funds on behalf of a family who employs a provider to provide services, supervision beyond basic supervision provided by a parent or guardian, or training to a child in the family home or community of the child according to the ISP or Annual Plan for the child.

(39) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child is known as the Child Needs Assessment (CNA). The Department incorporates Version B of the CNA dated July 1, 2014 into these rules by this reference. The CNA is maintained by the Department at: www.dhs.state.or.us/spd/tools/dd/cm/CNA_Child_In-home.xls. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(40) "General Business Provider" means an organization or entity selected by a parent or guardian and paid with IHS funds that:

(a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(41) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child.

(42) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to enable a child to be independent in the family home and community such as:

(a) Meal planning and preparation;

(b) Managing personal finances;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(43) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(44) "IHS Funds" means "in-home support funds". IHS funds are public funds contracted by the Department to the CDDP and managed by the CDDP to assist a family with the identification and selection of supports for a child according to an ISP or Annual Plan.

(45) "In-Home Expenditure Guidelines" mean the guidelines that describe allowable uses for IHS funds. Effective January 1, 2015, the Department incorporates version 2.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(46) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with an ISP or Annual Plan, and purchase of supports that are not available through other resources that are required for a child with an intellectual or developmental disability who is eligible for in-home support services to live in the family home. In-home supports are designed to:

(a) Support a child to be independent and to be engaged in a life that is fully integrated in the community.

(b) Prevent unwanted out-of-home placement and maintain family unity; and

(c) Whenever possible, reunite a family with a child who has been placed out of the family home.

(47) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child.

(48) "Independent Provider" means a person selected by a parent or guardian and paid with IHS funds to directly provide services to a child.

(49) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(50) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(51) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the child. The ISP reflects the services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(52) "Job Development" means "job development" as defined in OAR 411-345-0020.

(53) "Natural Supports" mean the parental responsibilities for a child who is less than 18 years of age and the voluntary resources available to the child from relatives, friends, neighbors, and the community that are not paid for by the Department.

(54) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(55) "OHP" means the Oregon Health Plan.

(56) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(57) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(58) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(59) "Parent" means the biological parent, adoptive parent, stepparent, or legal guardian of a child.

(60) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by a child, includes people chosen by the child, ensures that the child directs the process to the maximum extent possible, and that the child is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the child and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the child.

(61) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(62) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(63) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(64) "Primary Caregiver" means the parent, guardian, relative, or other non-paid parental figure of a child that provides direct care at the times that a paid provider is not available.

(65) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(66) "Provider" means a person, agency, organization, or business selected by a parent or guardian that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(67) "Provider Organization" means an entity licensed or certified by the Department that is selected by a parent or guardian and paid with IHS funds that:

(a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;

(b) Provides supports for a child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(68) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(69) "Regional Process" means a standardized set of procedures through which the needs of a child and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Plan for the child. A child who meets the general fund eligibility under OAR 411-308-0060 may be granted access to in-home supports through the regional process.

(70) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(71) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in an ISP and relating to the ADL, IADL, and health-related tasks of a child as discussed by the parent, services coordinator, and ISP team.

(72) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of a child.

(73) "Skills Training" means the activities described in OAR 411-308-0120 that are intended to maximize the independence of a child through training, coaching, and prompting the child to accomplish ADL, IADL, and health-related skills.

(74) "Social Benefit" means the service or financial assistance solely intended to assist a child with an intellectual or developmental disability to function in society on a level comparable to that of a child who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a child regardless of intellectual or developmental disability;

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a child with or without an intellectual or developmental disability; or

(D) Replace other governmental or community services available to a child.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by a child to be supported in the family home.

(75) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-308-0120 such as:

(a) Necessary medical supplies specified in an ISP that are not available under the state plan;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(76) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(77) "Supplant" means take the place of.

(78) "Support" means the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(79) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(80) "Supported Employment - Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

(81) "Supported Employment - Small Group Employment Support" means "supported employment - small group employment support" as defined in OAR 411-345-0020.

(82) "These Rules" mean the rules in OAR chapter 411, division 308.

(83) "Transition Costs" mean the expenses described in OAR 411-308-0120 required for a child to make the transition to the family home from a nursing facility or ICF/ID.

(84) "Unacceptable Background Check" means a check that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) The person applying to be an independent provider has been disqualified under OAR 407-007-0275;

(b) The person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been disqualified under OAR 407-007-0275; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(85) "Unusual Incident" means any incident involving a child that includes serious illness or an accident, death, injury or illness requiring

inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(86) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-308-0150.

(87) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-308-0120 that are made to the vehicle that is the primary means of transportation for a child in order to accommodate the service needs of the child.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0030
In-Home Support Administration and Operation

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services. The fiscal intermediary receives and distributes IHS funds on behalf of a family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of the family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(2) GENERAL RECORD REQUIREMENTS.

(a) DISCLOSURE. For the purpose of disclosure from medical records under these rules, a CDDP is considered a "public provider" as defined in ORS 179.505 and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by the family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:

(A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of entry into in-home support;

(B) Records related to receipt and disbursement of IHS funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of the acceptance or delegation from the family of the record keeping responsibilities outlined in these rules. Records must include:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records to record employee services, including timesheets signed by both employee and employer.

(C) Incident reports, including those involving CDDP staff;

(D) A functional needs assessment and other assessments used to determine required supports, preferences, and resources;

(E) When a child is not Medicaid Title XIX eligible, documentation of general fund eligibility;

(F) ISP or Annual Plan and reviews;

(G) Correspondence and notes from the services coordinator related to plan development and outcomes; and

(H) Family satisfaction information.

(3) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010.

(b) The individual rights described in OAR 411-318-0010 must be provided as described in OAR 411-320-0060.

(4) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The policy and procedures for complaints must be explained and provided as described in OAR 411-320-0175.

(5) NOTIFICATION OF PLANNED ACTION. In the event a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(6) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) A parent or guardian may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025.

(c) A notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided as described in OAR 411-320-0175.

(7) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish the objectives of the CDDP and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0040
Required In-Home Support

(1) The CDDP must provide or arrange for the following services as required to meet the support needs of children receiving in-home support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and alternative resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put an ISP or Annual Plan into practice, including help to monitor and improve the quality of personal supports and to assess and revise the goals of the ISP or Annual Plan; and

(D) Assistance to families to access information, referral, and local capacity building services through the family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of IHS funds on behalf of families in addition to making payment with the authorization of the family; and

(B) Assistance for families to fulfill roles and obligations as employers when providers are paid with IHS funds.

(2) The CDDP must inform families about in-home support when a child is determined eligible for developmental disability services. The CDDP must provide accurate, up-to-date information that must include:

(a) The criteria for entry and for determining supports, including information about eligibility for in-home supports and how these supports are different from family support services provided under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using in-home support, including the in-home support planning process and the regional process (as applicable);

(c) The responsibility of providers of in-home support and CDDP employees as mandatory reporters of child abuse;

(d) A description of the responsibilities of the family in regards to the use of public funds;

(e) An explanation of the rights of the family to select and direct providers from among those qualified according to OAR 411-308-0130 to provide services authorized through an ISP or Annual Plan and purchased with IHS funds; and

(f) Information on complaint and hearing rights and how to raise and resolve concerns about in-home supports.

(3) The CDDP must make the information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of each family.

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0050
Financial Limits of In-Home Support

(1) The use of IHS funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State plan personal care service hours as described in OAR chapter 411, division 34.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services;

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized; and

(C) If an individual is utilizing less than 25 hours of job coaching in any one week, employment services may be combined with small group employment support and employment path services so long as the combination of services does not exceed 25 hours per week.

(2) For a child who is not Medicaid Title XIX eligible:

(a) Support must be limited to:

(A) The amount of support determined to be necessary to prevent out-of-home placement that is specified in an Annual Plan and does not exceed the maximum allowable monthly plan amount published in the In-home Expenditure Guidelines in any month during the plan year; and

(B) The amount of time necessary for a child to transition into waiver or Community First Choice state plan services, if eligible.

(b) Payment rates used to establish the limits of financial assistance for a specific service in an Annual Plan must be based on the In-home Expenditure Guidelines.

Stat. Auth.: ORS 409.050 & 430.6620
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0060
Eligibility for In-Home Support

(1) STANDARD ELIGIBILITY.

(a) In order to be eligible for in-home support, a child must:

(A) Be under the age of 18;

(B) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

(C) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;

(D) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) Meet the level of care as defined in OAR 411-320-0020;

(F) Reside in the family home; and

(G) Be safely served in the family home.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when a child retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When a child is disqualified for a transfer of assets, the parent and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(2) GENERAL FUND ELIGIBILITY. When the standard eligibility criterion described in section (1)(a)(B) of this rule is not met, the CDDP of the county of origin may find a child eligible for in-home support when the child:

(a) Is experiencing a crisis and may be safely served in the family home;

(b) Has exhausted all appropriate alternative resources including, but not limited to, natural supports and family support as defined in OAR 411-305-0020;

(c) Does not receive or may stop receiving other Department-paid in-home or community living services other than Medicaid state plan personal care services, adoption assistance, or short-term crisis diversion services as described in 411-320-0160 to prevent out-of-home placement; and

(d) Is at risk of out-of-home placement and requires in-home support to be maintained in the family home; or

(e) Resides in a Department-paid residential setting and requires in-home support to return to the family home.

(3) CONCURRENT ELIGIBLITY. A child not eligible for in-home support from more than one CDDP unless the concurrent service:

(a) Is necessary to transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0070
In-Home Support Entry, Duration, and Exit

(1) ENTRY.

For standard eligibility, a CDDP must:

(a) Confirm a child meets the standard eligibility criteria described in OAR 411-308-0060; and

(b) Complete a level of care determination, a functional needs assessment, an ISP, and authorize funds for services as described in OAR 411-308-0080.

For general fund eligibility, a CDDP must:

(A) Determine crisis eligibility and have confirmation from the Regional Crisis Diversion Program that a child meets the crisis diversion criteria;

(B) Complete an Annual Plan, based on the collaboration between the Regional Crisis Diversion Program and the CDDP, that includes strategies to resolve identified crisis risk factors and possible resources; and

(C) Have the Annual Plan approved by the Department prior to implementation of proposed crisis intervention services.

(2) CHANGE OF COUNTY OF RESIDENCE. If a child and the family move outside the service area of a CDDP, the originating CDDP must arrange for services purchased with IHS funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information to the family about the need to apply for services in the new CDDP and assist the family with the application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(3) EXIT.

(a) For standard eligibility, a child must exit In-Home Support for Children when the child:

(A) Is no longer receiving Medicaid Title XIX;

(B) The parent or guardian submits a written request to end the In-Home Support for Children services;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services as determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) Does not meet the level of care as defined in OAR 411-320-0020;

(F) May not be safely served in the family home;

(G) No longer resides in the family home;

(H) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(I) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the ISP or Annual Plan development and monitoring activities and does not respond to a notice of intent to terminate; or

(J) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP or Annual Plan, refused to cooperate with documenting expenses of IHS funds, or otherwise knowingly misused public funds associated with in-home support.

(b) For general fund eligibility, a child must exit in-home support when the child:

(A) No longer needs in-home support to prevent out-of-home placement;

(B) Meets the standard eligibility requirements for in-home support;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) May not be safely served in the family home;

(F) No longer resides in the family home;

(G) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(H) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the ISP or Annual Plan development and monitoring activities and does not respond to a notice of intent to terminate; or

(I) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP or Annual Plan, refused to cooperate with documenting expenses of IHS funds, or otherwise knowingly misused public funds associated with in-home support.

(c) When a child is being exited from in-home support, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0080

Required In-Home Support Services

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support.

(a) The planning process must occur in a manner that:

(A) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community; and

(B) Is consistent in both style and setting with the needs and preferences of the child and the family including, but not limited to, informal interviews, informal observations in home and community settings, or formally structured meetings.

(b) For standard eligibility, a functional needs assessment must be completed using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with IHS funds and annually thereafter.

(a) The ISP or Annual Plan must include, but not be limited to:

(A) The legal name of the child and the name of the parent (if different than the last name of the child) or the name of the guardian;

(B) A description of the supports required that is consistent with the support needs identified in an assessment of the child, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and alternative resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(E) The identity of the person responsible for case management and monitoring the ISP or Annual Plan;

(F) Signatures of the services coordinator, the parent or guardian, and the child (as appropriate); and

(G) The review schedule of the ISP or Annual Plan.

(b) For a child accessing in-home supports through general fund eligibility, a plan to reduce or eliminate the need for in-home supports through general funds must be included. The plan may include assisting the child to access waiver or Community First Choice state plan services, if eligible.

(c) An ISP must also include the following:

(A) The manner in which services are delivered and the frequency of services;

(B) Service provider type;

(C) The strengths and preferences of the child;

(D) Individually identified goals and desired outcomes;

(E) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(F) The risk factors and the measures in place to minimize the risk factors, including back-up plans for assistance with support and service needs; and

(G) A provision to prevent unnecessary or inappropriate care.

(3) An ISP or Annual Plan, or records supporting development of an ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, IHS funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using IHS funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed including, but not limited to, identification of risks including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the family to recognize and report abuse.

(4) The services coordinator must obtain a Nursing Service Plan when in-home supports are used to purchase services requiring the education and training of a nurse.

(5) The services coordinator must obtain a Behavior Support Plan when the Behavior Support Plan is implemented by the family or providers during the plan year.

(6) In-home supports may only be provided after an ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the parent or guardian.

(7) At least annually, the services coordinator must conduct and document reviews of an ISP or Annual Plan and resources with a family as follows:

(a) Evaluate progress toward achieving the purposes of the ISP or Annual Plan;

(b) Note effectiveness of purchases based on services coordinator observation and family satisfaction;

(c) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and

(d) For a child who meets the general fund eligibility under OAR 411-308-0060, a quarterly review of the continued risk for out-of-home placement and the availability of alternative resources, including eligibility for waiver and Community First Choice state plan services.

(8) When a child and family move to a different county, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and

(b) Transferring the unexpended portion of the in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-

13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0090
Managing and Accessing In-Home Support Funds

(1) IHS funds contracted to a CDDP by the Department to serve a specifically-named child must only be used to support that specified child. Services must be provided according to an approved ISP or Annual Plan. The IHS funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the procedures described in these rules.

(2) No child receiving in-home support may concurrently receive services through:

(a) Children's intensive in-home services as defined in OAR 411-308-0020;

(b) Direct assistance funds under family support as described in OAR 411-305-0120; or

(c) In-home support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060.

(3) Children receiving in-home support via general fund eligibility may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support via general fund eligibility may utilize family support information and referral services, other than direct assistance funds under family support while receiving in-home support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0100
Conditions for In-Home Support Purchases

(1) A CDDP must only use IHS funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with an ISP or Annual Plan that meets the requirements for development and content as described in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with IHS funds to be provided:

(a) In settings and under purchasing arrangements and conditions that enable a family to receive supports and services from a qualified provider as described in OAR 411-308-0130;

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to the health and safety of a child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental modifications to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(f) In accordance with OAR 411-308-0130 governing provider qualifications; and

(g) In accordance with the In-Home Expenditure Guidelines.

(3) When IHS funds are used to purchase services, training, supervision beyond basic supervision provided by a parent or guardian, or other personal care assistance for a child, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the parent or guardian, or any other person specified by the parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical, or emotional well-being or level of services required;

(c) Limits of payment:

(A) Payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using IHS funds.

(d) The provisions of provider termination as described in OAR 411-308-0130;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursing a family for expenses or advancing funds to a family to obtain services. The CDDP must issue payment, or arrange a fiscal intermediary to issue payment, directly to a qualified provider on behalf of a family after approved services described in an ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of IHS funds. During development of an ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0110
Using In-Home Support Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to an employee of a parent, employee of a general business provider, or employee of a provider organization who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(3) IHS funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(b) Services or activities that are carried out in a manner that constitutes abuse of a child;

(c) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(e) Purchase or lease of a vehicle;

(f) Purchase of a service animal or costs associated with the care of a service animal;

(g) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance service;

(i) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

(k) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(m) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charges, or contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, not in accordance with the In-Home Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-308-0020;

(o) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(p) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(q) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by a family through alternative resources or natural supports;

(r) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(s) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP or Annual Plan, refused to accept or delegate record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support; or

(t) Notwithstanding abuse as defined in ORS 419B.005, services that in the opinion of a services coordinator are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of a child such as the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0120

Supports Purchased with In-Home Support Funds

(1) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, IHS funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and OSIPM or OHP Plus benefits a child qualifies for

(a) Community First Choice state plan services. A child who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services:

(A) Behavior support services as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental modifications as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Skills training as described in section (6) of this rule;

(F) Relief care as described in section (7) of this rule;

(G) Assistive devices as described in section (8) of this rule;

(H) Assistive technology as described in section (9) of this rule;

(I) Chore services as described in section (10) of this rule;

(J) Community transportation as described in section (11) of this rule; and

(K) Transition costs as described in section (12) of this rule.

(b) Home and community-based waiver services. A child who is eligible for OSIPM and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management as defined in OAR 411-320-0020;

(B) Employment services as described in section (13) of this rule;

(C) Family training as described in section (14) of this rule;

(D) Environmental safety modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule; and

(F) Specialized medical supplies as described in section (17) of this rule.

(c) State Plan personal care services. A Child who is eligible for OHP Plus through Title XXI, has personal care supportive needs, and does not meet the level of care as defined in OAR 411-320-0020 may access State Plan personal care services if meet eligibility criteria as described in OAR chapter 411, division 034.

(2) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to allow a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver and the provider to early warning signs.

(i) When interventions in behavior are necessary, the interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-308-0020.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child and the primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care; or

(G) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the parent and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(4) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove, etc.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP of the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the assessed health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(5) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene — providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing a child or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning a child or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Delegated nursing tasks;

(F) First aid and handling emergencies — addressing medical incidents related to the conditions of a child, such as seizure, aspiration, constipation, or dehydration or responding to the call of the child for help during an emergent situation or for unscheduled needs requiring immediate response;

(G) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and

(H) Observation of the status of a child and reporting of significant changes to a physician, health care professional, or other appropriate person.

(b) IADL services include, but are not limited to, the following services provided solely for the benefit of the child:

(A) Light housekeeping tasks necessary to maintain a child in a healthy and safe environment - cleaning surfaces and floors, making the child's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Cognitive assistance or emotional support provided to a child due to an intellectual or developmental disability - helping the child cope with change and assisting the child with decision-making, reassurance, orientation, memory, or other cognitive functions; and

(D) Social support in the community around socialization and participation in the community:

(i) Support with socialization — assisting a child in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation — assisting a child in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(iii) Support with communication — assisting a child in acquiring, retaining, and improving expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring a child for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply

(c) Assistance with ADLs and IADLs may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(d) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(e) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services as defined in this rule available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment;

(D) Support generally provided for a child of similar age without disabilities by the parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the family; and

(G) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(7) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed 7 consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without permission from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider. If relief care is provided in the home of a qualified provider, the services coordinator and the parent must document that the home of the qualified provider is a safe setting for the child; or

(D) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the ISP.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than 7 consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(8) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable a child to increase the ability of the child to perform and support ADLs and IADLs or to perceive, control, or communicate within the family home and community environment in which the child lives.

(b) Assistive devices may be purchased with IHS funds when the intellectual or developmental disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not covered by other Medicaid programs to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures

through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through alternative resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(9) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(11) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal as identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child.

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(L) Reimbursement for out-of-state travel expenses; and

(M) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

(12) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(13) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for individual family members who are employed to care for the child.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(15) ENVIRONMENTAL SAFETY MODIFICATIONS

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct safety or long-term benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental modifications must only be completed to the family home.

(n) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(o) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(16) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.). Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0130

Standards for Providers Paid with In-Home Support Funds

(1) PROVIDER QUALIFICATIONS.

(a) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS. An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide in-home supports must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

(I) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(D) Be legally eligible to work in the United States;

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP or Annual Plan for the child, with such demonstration confirmed in writing by the parent or guardian, including:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent; and

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(I) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (http://exclusions.oig.hhs.gov/);

(J) If transporting the child, have a valid driver's license and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) Subsection (b)(C) of this section does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(d) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(e) All providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

(2) PROVIDER TERMINATION.

(a) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR 411-375-0070.

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(A) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(i) A provider has not provided any paid in-home services to an individual within the last previous 12 months;

(ii) A provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing in-home services in Oregon;

(iii) The background check for a provider results in a closed case pursuant to OAR 407-007-0325;

(iv) Services provided to an individual are being investigated by Adult or Child Protective Services for suspected abuse that poses imminent danger to current or future individuals; or

(v) Provider payments, all or in part, for a provider have been suspended based on a credible allegation of fraud or a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(B) The provider enrollment for an independent provider who is not a personal support worker may be terminated when the Department determines that, at some point after the initial qualification and authorization of the provider to provide supports purchased with IHS funds, the provider has:

(i) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(ii) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(iii) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(iv) Failed to safely and adequately provide the authorized services;

(v) Had a founded report of child abuse or substantiated abuse;

(vi) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(vii) Billed excessive or fraudulent charges or been convicted of fraud;

(viii) Made a false statement concerning conviction of crime or substantiated abuse;

(ix) Falsified required documentation;

(x) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(xi) Violated the requirement to maintain a drug-free work place;

(xii) Failed to provide services as required;

(xiii) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(xiv) Has been excluded or debarred by the Office of the Inspector General.

(C) If the CDDP or Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the CDDP or Department must issue a written notice.

(i) The written notice must include:

(I) An explanation of the reason for termination of the provider enrollment;

(II) The alleged violation as listed in subsection (A) or (B) of this section;

(III) The appeal rights for the independent provider, including how to file an appeal; and

(IV) The effective date of the termination.

(ii) For terminations based on substantiated protective services allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(D) The provider may appeal a termination within 30 days of the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(i) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(ii) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the termination notice was mailed to the provider.

(E) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

(3) Independent providers, including personal support workers, are not state, CDDP, or Support Services Brokerage employees.

(4) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-308-0120;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-308-0120.

(5) NURSES. A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license;

(b) Be enrolled in the Long-Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(c) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(6) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for a 24-hour residential setting, or licensed under OAR chapter 411, division 360 for an adult foster home, or certified and endorsed under OAR chapter 411, division 345 for employment or OAR chapter 411, division 328 for a supported living setting, or OAR 411-340-0170 for support services, may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services.

(a) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with IHS funds meet the standards for independent providers described in this rule.

(7) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with IHS funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with IHS funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractor's Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public and private transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and drivers with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs; and

(g) For providers of personal emergency response systems, a current business license.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0135
Standards for Employers

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by the parent to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) INTERVENTION. For the purpose of this rule, "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

(a) For a child to be eligible for in-home support provided by an employed personal support worker, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

(E) Recognize, discuss, and attempt to correct, with the personal support worker, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory personal support worker.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department as defined in section (4) of this rule;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive in-home support provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section.

(e) The child may receive in-home support provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) A parent not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the child.

(b) A parent able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent is not able to meet in order for the child to receive or continue to receive in-home support provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent and the employer responsibilities to be performed by the employer representative.

(c) When an employer representative is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, the parent must:

(A) Designate a different employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the child.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent may designate an employer representative to act on behalf of the parent to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent to act as the employer, the parent must seek an alternate employer for purposes of the employment of the personal support worker. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

(B) Document the specific employer responsibilities performed by the employer on a Department-approved form.

(c) The Department may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A founded report of child abuse or substantiated abuse;

(B) Participated in billing excessive or fraudulent charges; or

(C) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule.

(d) If the Department suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, the parent may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent when:

(A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

(b) If the parent does not agree with the action taken by the Department, the parent may request an administrator review.

(A) The request for an administrator review must be made in writing and received by the Department within 45 days from the date of the notice.

(B) The determination of the Director is issued in writing within 30 days from the date the written request for an administrator review was received by the Department.

(C) The determination of the Director is the final response from the Department.

(c) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from in-home support, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670
Hist.: APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0140
Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

411-308-0150
Variances

(1) The Department may grant a variance to these rules:

(a) If the CDDP lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative practice, service, method, concept, or procedure shall result in services or systems that meet or exceed the standards in these rules and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws; or

(c) If there are other extenuating circumstances.

(2) Variances are not granted for OAR 411-308-0110 and 411-308-0130.

(3) The CDDP requesting a variance must submit a written 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) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

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

(e) If the variance applies to the services for a child, evidence that the variance is consistent with the currently authorized ISP or Annual Plan for the child.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the CDDP and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(5) The CDDP may request an administrator review of the denial of a variance request by sending a written request for review to the Director. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Definitions, Individual Rights, Complaints, Notification of Planned Action, and Contested Case Hearings
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Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently adopting the July 1, 2014 temporary adoption of OAR 411-317-0000 and the rules in OAR chapter 411, division 318.

The Department is adopting OAR 411-317-0000 to create a general rule for definitions and rules in OAR chapter 411, division 318 to prescribe:

The rights of individuals receiving developmental disability services in accordance with Senate Bill 22 (2013 Regular Session);

The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;

The requirements for a Notification of Planned Action in the event a developmental disability service is denied, reduced, suspended, or terminated;

The contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and

The contested case hearing processing for challenging a provider notice of involuntary reduction, transfer, or exit.
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411-317-0000
Definitions for Developmental Disability Services

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 300 to 375:

(1) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by 407-045-0310.

(2) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(3) "Activities of Daily Living (ADL)" are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Administration of Medication" means the act of placing a medication in or on the body of an individual by a person responsible for the care of the individual and employed by, or under contract to, the individual or as applicable the legal or designated representative of the individual or provider organization.

(5) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(6) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(7) "Advocate" means a person other than paid staff who has been selected by an individual or by the legal representative of an individual to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(8) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances physical functioning.

(9) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(10) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes, but is not limited to, determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "Centers for Medicare and Medicaid Services (CMS)". The Centers for Medicare and Medicaid Services is the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.

(12) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(13) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(14) "Community First Choice (K Plan)" means the state plan amendment for Oregon authorized under section 1915(k) of the Social Security Act.

(15) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(16) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(17) "Day" means a calendar day unless otherwise specified.

(18) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

(19) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(20) "Entry" means admission to a Department-funded developmental disability service.

(21) "Exit" means termination or discontinuance of a Department-funded developmental disability service.

(22) "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(23) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(24) "Guardian" means the parent for an individual less than 18 years of age or a person or agency appointed and authorized by a court to make decisions about services for an individual.

(25) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession. Examples of a health care provider include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), chiropractor, respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(26) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(27) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) of the Social Security Act.

(28) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(29) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(30) "Instrumental Activities of Daily Living (IADL)" are the activities other than activities of daily living required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Managing personal finances;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(31) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(32) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the person acting under the authority granted in a power of attorney, or the person or agency authorized by a court to make decisions about services for the adult.

(33) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(34) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(35) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan or Annual Plan and the quality of services delivered by other organizations.

(36) "Natural Support" means:

(a) For a child, the parental responsibilities for a child and the voluntary resources available to the child from the relatives, friends, neighbors, and the community of the child that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from the relatives, friends, significant others, neighbors, roommates, and the community of the adult that are not paid for by the Department.

(37) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(38) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(39) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(40) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(41) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(42) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(43) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of services and support for an individual in the home of the individual.

(44) "Primary Care Provider" means the health care provider who delivers day-to-day comprehensive health care. Typically, the primary care provider acts as the first contact and principal point of continuing care for an individual within the health care system and coordinates other specialist care that the individual may need.

(45) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(46) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(47) "Protection" means the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(48) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(49) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(50) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(51) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(52) "Review" means a request for reconsideration of a decision.

(53) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(54) "Self-Direction" means that an individual, or as applicable the legal or designated representative of the individual, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(55) "Services" include, but are not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, or transportation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(56) "Significant Other" means a person selected by an individual to be the friend of the individual.

(57) "Staff" means paid employees who are responsible for providing services and supports to individuals and whose wages are paid in part or in full with funds sub-contracted with a community developmental disability program, support services brokerage, or contracted directly through the Department.

(58) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(59) "Support" means the assistance that an individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(60) "Transfer" means movement of an individual from one type of service to another type of service administered or operated by the same provider.

(61) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0000
Statement of Purpose and Scope

(1) The rules in OAR chapter 411, division 318 prescribe:

(a) The rights of individuals receiving developmental disability services;

(b) The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;

(c) The requirements for notification in the event a developmental disability service is denied, reduced, suspended, or terminated and the contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and

(d) The contested case hearing process for challenging an involuntary reduction, transfer, or exit.

(2) The rules in OAR chapter 411, division 318 apply to the developmental disability services and service settings described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;

(c) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;

(d) OAR chapter 411, division 320 for community developmental disability programs;

(e) OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals with intellectual or developmental disabilities in community-based settings;

(f) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;

(g) OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities;

(h) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;

(i) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;

(j) OAR chapter 411, division 345 for employment services for adults with intellectual or developmental disabilities;

(k) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;

(l) OAR chapter 411, division 350 for medically fragile children's services;

(m) OAR chapter 411, division 355 for the Medically Involved Children's Program; and

(n) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0005
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 318:

(1) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(2) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(3) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(4) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(5) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(6) "CIIS" means "Children's Intensive In-Home Services". CIIS include the services described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350 for the Medically Fragile Children's Services Program; or

(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(7) "Claimant" means the individual directly impacted by the action that is the subject of a hearing request.

(8) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(9) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(10) "Complaint Log" means the list of complaint-related information that is completed and maintained by a local program.

(11) "Continuing Services" means the continuation of a developmental disability service following the request for a hearing until a Final Order is issued.

(12) "DD Administrative Hearing Request" means form SDS 0443DD.

(13) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

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

(15) "Department Hearing Representative" means the person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(16) "Department Staff" means the person employed by the Department who is knowledgeable in a particular subject matter. For the purposes of the complaint process, Department staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(17) "Developmental Disability Services" mean the services listed in OAR 411-318-0000 provided to an individual with an intellectual or developmental disability.

(18) "Director" means the Director of the Department of Human Services or the designee of the Director, which may include Department Staff.

(19) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider.

(20) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of an employee of the Department or an adverse provider relating to procedural requirements, fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(21) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child or an adult.

(22) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(23) "Individual" means a child or an adult applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(24) "Informal Conference" means the discussion between a claimant, the representative of the claimant, Department staff, and a Department representative that is help prior to a hearing to address any matters pertaining to the hearing, as described in OAR 411-318-0025. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

(25) "Informal Discussion" means the conversation between an individual or the representative of the individual and the designee of the Department or local program who received the complaint to address the content of the complaint. The informal discussion may result in resolution of the issue.

(26) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(27) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(28) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the person acting under the authority granted in a power of attorney, or the person or agency authorized by a court to make decisions about services for the adult.

(29) "Local Program" means the local CDDP, Support Services Brokerage, provider organization, CIIS program, or other certified, licensed, or endorsed provider or agency with which the Department contracts to provide developmental disability services and is providing services to the individual with whom the complaint is associated.

(30) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual.

(31) "Notice of Involuntary Reduction, Transfer, or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(32) "Notification of Planned Action" means form SDS 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(33) "OAH" means the Office of Administrative Hearings.

(34) "OHA" means the Oregon Health Authority.

(35) "Personal Agent" means personal agent as defined in OAR 411-340-0020.

(36) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary but all are consistent with the cultural considerations, needs, and preferences of the individual.

(37) "Program Director" means the Director of a local program or the designee of the Director.

(38) "Program Staff" means a person employed by the local program who is knowledgeable in a particular subject matter. For the purposes of the complaint process, program staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(39) "Protective Physical Intervention" means any manual physical holding of or contact with an individual that restricts freedom of movement.

(40) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(41) "Provider Organization" means an entity selected by an individual or the representative of the individual and paid with service funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(42) "Representative" means any adult, such as a parent, family member, guardian, legal representative, advocate, or other person, who is chosen by an individual or the legal representative of the individual to represent the individual in connection with the provision of developmental disability services or during the complaint or hearing process. The representative may not be a Department, CDDP, or Support Services Brokerage employee acting in official capacity. An individual or a legal representative of the individual is not required to choose a representative.

(43) "Request for Service" means:

(a) Submission of a completed application for developmental disability services as described in OAR 411-320-0080;

(b) A written request for a new developmental disability service or provider; or

(c) A written request for a change in a developmental disability service currently provided.

(44) "Service" means "developmental disability services" as defined in this rule.

(45) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services.

(46) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department, who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring developmental disability services.

(47) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(48) "These Rules" mean the rules in OAR chapter 411, division 318.

(49) "Transfer" means movement of an individual from a service setting to another service setting administered or operated by the same provider.

(50) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0010
Individual Rights

(1) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(2) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(b) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(c) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(i) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services and a reassessment of service needs;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(3) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(4) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(5) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(6) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(7) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0015
Complaints

(1) The Department and local programs must address all complaints in accordance with their policies and procedures and these rules.

(2) An individual or the representative of the individual may file a complaint at any time. A complaint may include, but is not limited to:

(a) An expression of dissatisfaction with a developmental disability service; or

(b) An allegation of circumstances or events that are contrary to law, rule, policy, or otherwise adverse to the interests of an individual.

(3) The complaint process described in this rule does not apply to a complaint in the following situations:

(a) The complaint is filed anonymously. Anonymous complaints are reviewed by the Governor's Advocacy Office;

(b) The merits of the complaint have been, or are going to be, decided by a judge or a juvenile court ruling;

(c) The subject matter of the complaint is not related to a developmental disability service or a provider; or

(d) The subject matter of the complaint is subject to review under the following:

(A) ORS 419B.005 to 419B.050 for child abuse reports;

(B) OAR chapter 309, division 118 for state institutions operated by the Oregon Health Authority;

(C) OAR 407-005-0025 and 407-005-0030 for discrimination against people with disabilities;

(D) OAR 407-005-0100 to 407-005-0120 for conduct of Department personnel;

(E) OAR chapter 411, division 020 for adult protective services;

(F) OAR 410-141-0260 to 410-141-0266 for Oregon Health Plan, Prepaid Health Plans;

(G) OAR 413-010-0420 for Department child welfare decisions;

(H) OAR 413-010-0700 to 413-010-0750 for child protective services dispositions;

(I) OAR 413-120-0060 for adoption placement selections; and

(J) OAR chapter 582, division 020 for vocational rehabilitation service determinations.

(4) If a complaint alleges circumstances that meet the criteria for an investigation of abuse, the allegation must be immediately reported to the appropriate protective service entity, such as the Department, CDDP, Support Services Brokerage, CIIS, Office of Adult Abuse Prevention and Investigations, child welfare, or law enforcement.

(5) If an individual or the representative of the individual makes a complaint identified in section (3) of this rule, the local program or Department must assist the individual or the representative of the individual with filing the complaint with the appropriate entity, if requested by the individual or the representative of the individual.

(6) The local programs must have and implement written policies and procedures regarding individual complaints and the complaint process. A copy of the policies and procedures for resolving complaints must be maintained on file at the office of the local program and must be available to staff, individuals, representatives of the individuals, providers, and the Department. The policies and procedures must include, but are not limited to:

(a) Method and form used to submit a complaint (form SDS 0946 may be used);

(b) Process for reviewing and resolving a complaint;

(c) Time frames for responding to a complaint as set forth by this rule; and

(d) Documentation to be used in response to a complaint as set forth in this rule.

(7) COMPLAINT LOG.

(a) The local programs must maintain a complaint log. At a minimum, the complaint log must include:

(A) The name of the individual for which the complaint is being filed;

(B) The name of the person making the complaint, if known;

(C) The name of the person taking the complaint;

(D) The nature of the complaint, including if there was a request for new or changed developmental disability services which may result in a hearing;

(E) The date the complaint was received;

(F) The date the complaint was acknowledged in writing;

(G) The written outcome of the complaint; and

(H) The date that the written outcome was mailed.

(b) Complaints regarding personnel issues and allegations of abuse must be maintained separately from the complaint log.

(c) The complaint log for the local program documents only complaints pertaining to the local program.

(A) In the event that an individual or the representative of the individual has a complaint against another agency or program, the local program must assist the individual or the representative of the individual with filing the complaint against the other agency or program.

(B) The local program does not document complaints against another agency or program in the complaint log for the local program, but does document the support provided by the local program in the progress notes for the individual.

(8) SCREENING OF COMPLAINTS. The local programs must screen all complaints for potential hearing related issues. In the event that a complaint appears to allege a denial, reduction, suspension, or termination of a developmental disability service, the local program must issue a Notification of Planned Action and advise the individual or the representative of the individual of the right to a hearing and assist the individual or the representative of the individual with filing a hearing request, if so desired. In the event that the individual or the representative of the individual decides to file a complaint rather than a hearing request, the decision of the individual or the representative of the individual must be documented in the file for the individual.

(9) FILING A COMPLAINT.

(a) Complaints may be made orally, in writing, or on a complaint form (SDS 0946 may be used).

(b) A complaint regarding dissatisfaction with the services of a provider organization may be filed with the Department or directly with the provider organization, Support Services Brokerage, or CDDP.

(c) A complaint regarding dissatisfaction with the services of a Support Services Brokerage or CDDP may be filed with the Department or directly with the Support Services Brokerage or CDDP.

(d) A complaint regarding dissatisfaction with CIIS may be filed with the Department or directly with the CIIS program.

(e) A complaint regarding dissatisfaction with the Department must be filed with the Department.

(10) PROCESS FOR ADDRESSING COMPLAINTS.

(a) The local program or Department must provide written acknowledgement of a complaint to the individual or the representative of the individual within five business days from the receipt of the complaint.

(b) The written acknowledgement must inform the individual or the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from receiving a written outcome following review of the complaint by the local program or Department.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or the Director of the Department.

(C) The informal discussion must occur within 10 business days of the written acknowledgement of the complaint.

(D) In the event that a resolution is reached during the informal discussion, the local program or Department must mail a written outcome to the individual and the representative of the individual within 10 business days of the informal discussion. A copy of the written outcome must be maintained in the file for the individual.

(c) The local program or Department must complete a review of the complaint and issue a written outcome to the individual and the representative of the individual within 45 days from the receipt of the complaint,

unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 days.

(A) The review of the complaint must include, but is not limited to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department.

(B) The written outcome of the complaint may be issued on the complaint form or may be issued in a separate document. The written outcome must include:

(i) The rationale for the outcome;

(ii) The reports, documents, and other information relied upon in deciding the outcome of the complaint, or a summary of the reports, documents, and other information relied upon;

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in determining the outcome (Notification of Rights SDS 0948); and

(iv) Information about the right of the individual or the representative of the individual to request a review of the written outcome (Notification of Rights SDS 0948).

(11) REQUEST FOR REVIEW.

(a) An individual or the representative of the individual may request a review of a written outcome issued by a local program within 30 days of the date identified on the written outcome.

(A) If a provider organization issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by:

(i) The local CDDP, Support Services Brokerage, or CIIS program; or

(ii) The Department.

(B) If a CDDP, Support Services Brokerage, or CIIS program issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by the Department.

(C) If the Department issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by OHA.

(D)The written outcome issued by the OHA is the final response.

(b) The local CDDP, Support Services Brokerage, CIIS program, Department, may uphold, alter, or overturn a written outcome issued by a provider organization.

(c) The Department may uphold, alter, or overturn a written outcome issued by a provider organization, local CDDP, Support Services Brokerage, or CIIS.

(d) OHA may uphold, alter, or overturn a written outcome issued by the Department.

(12) PROCESS FOR ADDRESSING AND RESOLVING A REQUEST FOR REVIEW.

(a) The receiving entity of a request for a review of a written outcome must acknowledge receipt of the request by issuing a written acknowledgement to the individual and the representative of the individual within five business days from the receipt of the request for a review.

(b) The written acknowledgement must inform the individual and the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from pursuing a review of the written outcome by the receiving entity.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or Director of the Department.

(C) The informal discussion must occur within 10 business days of the written acknowledgement of the request for a review.

(D) In the event that a resolution is reached during the informal discussion, the local program, the Department, or OHA must mail a written determination to the individual and the representative of the individual within 10 business days of the informal discussion. A copy of the written determination must be maintained in the file for the individual.

(c) The local program, the Department, or OHA must review the written outcome and issue a written determination to the individual and the representative of the individual within 45 days from the receipt of the request for a review unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 days.

(A) The review of the written outcome must include, but is not limited to, an investigation and records review by the Program Director of the local program or the Director of the Department or OHA.

(B) The written determination must include:

(i) The rationale for the determination;

(ii) The reports, documents, and other information relied upon in making the determination or a summary of the reports, documents, and other information relied upon; and

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in making the determination.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0020
Notification of Planned Action

(1) An individual and the representative of the individual must receive a written Notification of Planned Action in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(2) The Notification of Planned Action must be on the form prescribed by the Department (SDS 0947). The Notification of Planned Action must include:

(a) The specific date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual;

(b) The effective date of the denial, reduction, suspension, or termination;

(A) For a denial of service, the effective date is the same date that the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(B) For a reduction, suspension, or termination of service, the effective date is:

(i) For a Notification of Planned Action mailed or hand delivered on or before the 18th of the month, the end of the calendar month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(ii) For a Notification of Planned Action mailed or hand delivered on or after the 19th of the month, the end of the calendar month following the month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(iii) No fewer than 10 days after the date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable.

(c) The specific service or unit of service to be denied, reduced, suspended, or terminated;

(d) The rationale for the denial, reduction, suspension, or termination, including a reference to the specific reports, documents, or other information relied on in making the determination;

(e) The specific sections of the rules or statutes upon which the determination is based;

(f) Notification that the documents relied upon may be reviewed by the individual or the representative of the individual; and

(g) Notification that if the individual or the representative of the individual disagrees with the determination to deny, reduce, suspend, or terminate a service, the individual has the right to request a hearing, or the representative of the individual has the right to request a hearing on the behalf of the individual, as provided in ORS chapter 183 and OAR 411-318-0025. The notification of the right to a hearing must include:

(A) The timeline for requesting a hearing;

(B) How to request a hearing;

(C) The right to receive assistance from the local program in completing and submitting a request for hearing;

(D) The right of the individual to receive continuing services at the same level until a Final Order has been issued or, at the request of the individual or the representative of the individual, or until the individual has exhausted the appeals processes identified in OAR 411-318-0025;

(E) Notification of the time frame within which the individual or the representative of the individual must request continuing services;

(F) Notification of how, when, and where the individual or the representative of the individual may request continuing services; and

(G) Notification that the individual may be required to repay the Department for any continuing services received during the hearing process if the Final Order upholds the determination to reduce, suspend, or terminate the services.

(3) The Notification of Planned Action must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and the representative of the individual.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0025
Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials

(1) An individual or the representative of the individual may request a hearing, as provided in ORS chapter 183, if the individual experiences a denial, reduction, suspension, or termination of a developmental disability service or in instances when a timely Notification of Planned Action has not been provided.

(2) HEARING REQUESTS.

(a) The request for a hearing must be made within 90 days from the date on a Notification of Planned Action.

(b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request (form SDS 0443DD).

(A) ORAL HEARING REQUESTS.

(i) The individual or the representative of the individual may orally express a desire for a hearing to the local program or Department staff.

(ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

(B) WRITTEN HEARING REQUESTS.

(i) The individual or the representative of the individual may provide a written request for a hearing to the local program or Department staff.

(ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) CONTINUING SERVICES PENDING A FINAL ORDER.

(a) In the event of a reduction, suspension, or termination of a developmental disability service, a claimant or the representative of the claimant may request continuing services for the claimant during the hearing process. To receive continuing services, a claimant or the representative of the claimant must either:

(A) Request a hearing before the effective date of action; or

(B) Within 10 business days after the effective date of action identified on the Notification of Planned Action, request a hearing and continuing services.

(b) The Department grants a late request for continuing services when the Department determines a claimant or the representative of a claimant has good cause for the late request.

(c) The claimant may be required to pay back any benefits received during the hearing process if the Final Order is not in the favor of the claimant.

(4) INFORMAL CONFERENCE.

(a) The Department staff, Department representative, and the claimant or the representative of the claimant may have an informal conference, without the presence of an administrative law judge, to discuss the action that is the subject of the hearing request. An informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the representative of the claimant to settle the matter;

(B) Ensure the claimant or the representative of the claimant understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or representative of the claimant an opportunity to review the information that is the basis for the action that is the subject of the hearing request;

(D) Inform the claimant or the representative of the claimant of the rules that serve as the basis for the action that is the subject of the hearing request;

(E) Give the Department and the claimant or the representative of the claimant the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the representative of the claimant an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review the action that is the subject of the hearing request.

(b) At any time prior to the hearing date, the claimant or the representative of the claimant may request an additional informal conference with a Department representative. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the reprieve sought at any time before a Final Order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Employees for the Department, CDDP, and Support Services Brokerage are authorized to appear as a witness on behalf of the Department during an informal conference and hearing.

(6) HEARINGS NOT OPEN TO THE PUBLIC. Non-participants may attend a hearing only with the consent of the claimant or the representative of the claimant and the Department representative.

(7) WITHDRAWAL OF HEARING REQUEST. A claimant or the representative of a claimant may withdraw a hearing request at any time prior to the issuance of a Final Order. The withdrawal is effective on the date the request for the withdrawal is received by OAH. The Department shall issue an order of withdrawal to the last known address of the claimant. The claimant or the representative of the claimant may cancel the withdrawal up to 10 business days following the date the order of withdrawal is issued.

(8) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the representative of the claimant appears by phone or in person at the hearing. The dismissal order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the representative of the claimant upon a showing that the claimant or the representative of the claimant has good cause for not attending the hearing or requesting a postponement.

(9) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(a) Whether the Department is authorizing OAH to issue a Final Order, a proposed order, or a proposed and Final Order; and

(b) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing request is being referred for an expedited hearing.

(10) FINAL ORDER. A Final Order is the final action expressed in writing by OAH as described in OAR 137-003-0665. A Final Order is issued within 90 days of the request for a hearing or within 90 days from the receipt of a proposed order or a proposed and Final Order from OAH.

(11) PROPOSED ORDERS. The Department issues a Final Order after OAH issues a proposed order unless the Department authorizes OAH to issue the Final Order under OAR 137-003-0655.

(12) PROPOSED AND FINAL ORDERS. A proposed and Final Order becomes a Final Order 21 days after OAH issues a proposed and Final Order unless:

(a) The claimant or the representative of the claimant has filed written exception and written argument as described in section (13) of this rule;

(b) The Department has issued a revised order; or

(c) The Department has notified OAH and the claimant or the representative of the claimant that the Department shall issue the Final Order.

(13) EXCEPTIONS.

(a) The claimant or the representative of the claimant may file a written exception and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and Final Order. The written exception and written argument must be postmarked to the location indicated in the OAH order no later than 20 days after service of the proposed order or proposed and Final Order unless an earlier deadline has been established pursuant to section (9)(b) of this rule.

(b) Unless the Department receives a timely written exception and written argument as described above, the Department shall issue the Final Order unless the Department authorizes OAH to issue the Final Order in compliance with OAR 137-003-0655.

(14) PETITION OF FINAL ORDER. A claimant or the representative of the claimant may file a petition for reconsideration or rehearing up to 60 days after a Final Order is served. The petition must be filed with the entity that issued the Final Order unless stated otherwise on the Final Order.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

411-318-0030
Contested Case Hearings for Provider Notices of Involuntary Transfers or Exits

(1) This rule applies to involuntary reductions, transfers, or exits by a provider, including a licensed or certified provider organization, who has a contract with the Department, CDDP, or Support Services Brokerage. This rule does not apply to providers who have a direct employer-employee relationship with an individual or the employer representative of the individual.

(2) The individual must be given the opportunity to dispute an involuntary reduction, transfer, or exit by requesting a hearing as provided in ORS chapter 183.

(3) An individual or the representative of the individual may request a hearing either orally or in writing when the individual and the representative of the individual receives a Notice of Involuntary Reduction, Transfer, or Exit (SDS 0719DD).

(a) To request a hearing in writing:

(A) The individual or the representative of the individual must complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit and submit the form to the Central Office of the Department for processing as described on the form; or

(B) The individual or the representative of the individual may meet with a staff person of the local program or Department to complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit. After meeting with the individual or the representative of the individual, the CDDP, Support Services Brokerage, or Department must submit the Administrative Hearing Request form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(b) To request a hearing orally, the individual or the representative of the individual must orally express the desire for a hearing to a staff person of the CDDP, Support Services Brokerage, or Department. Upon receipt of an oral request for a hearing, the CDDP, Support Services Brokerage, or Department must complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit and submit the Administrative Hearing Request form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(4) Upon receipt of the Administrative Hearing Request form for a Notice of Involuntary Reduction, Transfer, or Exit, the Central Office of the Department must:

(a) Refer the hearing request to OAH within five business days from the receipt of the hearing request;

(b) Assist the claimant or the representative of the claimant in gathering and submitting exhibits; and

(c) Act as liaison between OAH and the CDDP or Support Services Brokerage responsible for the services of the claimant.

(5) OAH communicates directly with the claimant and the representative of the claimant regarding informal conference dates, hearing dates, and the Final Order as defined in OAR 137-003-0070.

(6) If an individual or the representative of an individual requests a hearing prior to the effective date of the action reported on the Notice of Involuntary Reduction, Transfer, or Exit, the individual must receive the same services until receipt of the Final Order.

(7) When an individual has been given less than 30 days advanced written Notice of Involuntary Reduction, Transfer, or Exit due to a medical emergency or because the individual is engaging in behavior that poses an imminent danger to self or others, and the individual or the representative of the individual has requested a hearing as described in this rule, the provider must continue provision of service to the individual until receipt of the Final Order.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Community Developmental Disability Programs
Adm. Order No.: APD 41-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
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Rules Repealed: 411-320-0020(T), 411-320-0040(T), 411-320-0060(T), 411-320-0080(T), 411-320-0090(T), 411-320-0100(T), 411-320-0110(T), 411-320-0120(T), 411-320-0130(T), 411-320-0170(T), 411-320-0175(T)
Subject: The Department of Human Services, Office of Developmental Disability Services (Department) is permanently updating the rules in OAR chapter 411, division 320 for Community Developmental Disability Programs (CDDPs).

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, align the definitions with ORS 427.005, clarify adaptive behavior and adaptive behavior assessments, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

Implement Senate Bill 22 by updating the rights of individuals and providing a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

Modify and clarify eligibility for developmental disability services to provide clear direction to eligibility specialists and mirror federal regulations and statutory intent. Specifically, the rule changes:

Clarify adaptive behavior, the adaptive behavior assessments that may be used to determine developmental disability eligibility and level of care, and who may perform an adaptive behavior assessment;

Clarify intellectual disability and the documentation required if an individual is not able to participate in an intellectual functioning assessment due to profound intellectual disability;

Specify that a General Abilities Index score may be used in place of a Full Scale IQ in the event a qualified professional determines the General Abilities Index score is more valid than the Full Scale IQ;

Include "motor impairment" in the list of conditions, diagnoses, or syndromes for which adaptive impairment may not be primarily attributed to;

Clarify developmental disability, including specifying that "other developmental disability" may not be a motor impairment;

Clarify determinations for children less than 7 years of age, including using a physician's statement only if a formal assessment is not available and using the school aged requirements to determine eligibility for children who are at least 5 years of age and who have had school aged testing completed; and

Adjust timelines for the application process and clarify the criteria for a completed application;

Correct language associated with financial eligibility for services and bring the rule into closer compliance with the Community First Choice1915(k) state plan by:

Recognizing that assistance with OSIPM and OHP Plus are appropriately identified as case management services; and

Eliminating certain timeframes for activities that are not able to be accomplished as currently written. The changes will allow for greater flexibility in meeting the overall expectations for timely access to services;

Require exit of an individual unavailable to participate in service planning due to incarceration;

Require that appropriate placement setting options are offered prior to entry and transfer as described in ORS 427.121;

Assure compliance with the Community First Choice 1915(k) state plan by:

Assuring a Level of Care determination is completed;

Assuring a functional needs assessment is completed; and

Assuring federal requirements associated with person-centered planning occurs consistent with CFR 441.540;

Require that individuals participate in the assessment process;

Incorporate the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan (ISP);

Require that an ISP be provided in a format and language understandable to an individual;

Comply with case management monitoring requirements found in the Community First Choice 1915(k) state plan by requiring a case management contact at least once every three months;

Require a plan of improvement within 45 days of a compliance review conducted every two years;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-320-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 320:

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "ABAS" means Adaptive Behavior Assessment System.

(3) "ABES" means Adaptive Behavior Evaluation Scale.

(4) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(5) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by 407-045-0310.

(6) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include, but are not limited to, adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including, but not limited to, walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by normed, standardized tests administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities. Adaptive behavior assessments include:

(A) Adaptive Behavior Assessment System (ABAS);

(B) Adaptive Behavior Evaluation Scale (ABES);

(C) Vineland Adaptive Behavior Scale (VABS);

(D) Scales of Independent Behavior-Revised (SIB-R); or

(E) Other assessments that are designed to measure adaptive behavior standardized and normed to a population consistent with the population of the applicant or approved by the Department of Human Services, Office of Developmental Disability Services (ODDS).

(b) DOMAIN SCORES. Adaptive behavior domain scores are identified on the following assessments of adaptive behavior:

(A) The ABAS and ABES are:

(i) Conceptual;

(ii) Practical; and

(iii) Social.

(B) The VABS are:

(i) Socialization;

(ii) Daily living skills;

(iii) Communication; and

(iv) Motor.

(C) The SIB-R are:

(i) Personal living skills;

(ii) Social interaction and communication skills;

(iii) Community living skills; and

(iv) Motor skills.

(c) COMPOSITE SCORE. The adaptive behavior composite score is the overall score which results from summing two or more domain scores on a given adaptive behavior assessment.

(d) SKILLED AREAS. Skilled areas are a particular assessed score. The skilled areas on the ABAS or ABES are the only skilled areas used for the purposes of OAR 411-320-0080 and include scaled scores in:

(A) Communication;

(B) Functional academics;

(C) Self-direction;

(D) Leisure;

(E) Social;

(F) Community use;

(G) Home and school living;

(H) Self-care;

(I) Health and safety; and

(J) Work.

(e) "Significant impairment" in adaptive behavior means:

(A) A composite score of at least two standard deviations below the norm;

(B) Two or more domain scores as identified in subsection (b) of this section are at least two standard deviations below the norm; or

(C) Two or more skilled areas as identified in subsection (d) of this section are at least two standard deviations below the norm.

(7) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(8) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(9) "Annual Plan" means the written summary a services coordinator completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(10) "Annual Review" means the annual review of the level of care determination.

(11) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(12) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the provider, adjust environment, and teach new skills.

(13) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(14) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(15) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(16) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes, but is not limited to, determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(17) "Case Management Contact" means a reciprocal interaction between a services coordinator and an individual or the legal or designated representative of the individual (as applicable).

(18) "CDDP" means "community developmental disability program". A CDDP is the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A CDDP operates in a specific geographic service area of the state under a contract with the Department, LMHA, or other entity as contracted by the Department.

(19) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(20) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(21) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(22) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-320-0030(4)(c) about:

(a) Case management;

(b) Service options;

(c) Service setting options; and

(d) Provider types.

(23) "CIIS" means "children's intensive in-home services". CIIS include the services described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350 for Medically Fragile Children's Services; and

(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(24) "CMS" means Centers for Medicare and Medicaid Services.

(25) "Completed Application" means an application required by the Department that:

(a) Is filled out completely, signed, and dated. An applicant who is unable to sign may sign with a mark, witnessed by another person; and

(b) Contains documentation required to make an eligibility determination as outlined in OAR 411-320-0080(1)(a)(B).

(26) "Composite Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(27) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services and attendant care provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated program for employment. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in Brokerages.

(28) "County of Origin" means:

(a) For an adult, the county of residence for the adult; and

(b) For a child, the county where the jurisdiction of guardianship exists.

(29) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(30) "Crisis Diversion Services" mean short-term services provided for up to 90 days or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis supports.

(31) "Crisis Plan" means the document generated by the CDDP or Regional Crisis Diversion Program that justifies and authorizes crisis supports and expenditures for an individual receiving crisis diversion services provided under these rules.

(32) "Current Documentation" means documentation relating to the intellectual or developmental disability of an individual in regards to the functioning of the individual within the last three years. Current documentation may include, but is not limited to, an ISP, Annual Plan, Behavior Support Plan, required assessments, educational records, medical assessments related to the intellectual or developmental disability of an individual, psychological evaluations, and assessments of adaptive behavior.

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

(34) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(35) "Developmental Disability (DD)" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080;

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD); and

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(36) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(37) "Domain Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(38) "Eligibility Determination" means a decision by the CDDP or by the Department regarding the eligibility of a person for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(39) "Eligibility Specialist" means an employee of the CDDP, or other agency, that contracts with the county or Department to determine eligibility for developmental disability services.

(40) "Entry" means admission to a Department-funded developmental disability service.

(41) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(42) "Functional Needs Assessment" means the comprehensive assessment or reassessment appropriate to the specific program in which an individual is enrolled that:

(a) Documents physical, mental, and social functioning;

(b) Identifies risk factors and support needs; and

(c) Determines the service level.

(43) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(44) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(45) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(46) "History" means, for the purposes of an eligibility determination as defined in this rule, necessary evidence of an intellectual disability prior to 18 years of age or an other developmental disability prior to 22 years of age, including previous assessments and medical evaluations prior to the date of eligibility determination for developmental disability services.

(47) "Home" means the primary residence of an individual that is not under contract with the Department to provide services to the individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site. For a child, a home may include a foster home funded by Child Welfare.

(48) "IEP" means "Individualized Education Program". An IEP is the written plan of instructional goals and objectives developed in conference with an individual, the parent or legal representative of an individual (as applicable), teacher, and a representative of the public school district.

(49) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(50) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(51) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(52) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(53) "Informal Adaptive Behavior Assessment" means:

(a) Observations of impairment in adaptive behavior recorded in the progress notes for an individual by a services coordinator or a trained eligibility specialist with at least two years of experience working with individuals with intellectual or developmental disabilities; or

(b) A standardized measurement of adaptive behavior, such as a Vineland Adaptive Behavior Scale (VABS) or Adaptive Behavior Assessment System (ABAS), that is administered and scored by a social worker or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities.

(54) "Intake" means the activity of completing the DD Intake Form (SDS 0552) and necessary releases of information prior to the submission of a completed application to the CDDP.

(55) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources that are used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in the community.

(56) "Intellectual Disability (ID)" means significantly subaverage general intellectual functioning defined as full scale intelligence quotients (IQs) 70 and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(57) "Intellectual Functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose of measuring intelligence. For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.

(58) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(59) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(60) "IQ" means intelligence quotient.

(61) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(62) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.

(63) "Legal Representative":

(a) For a child means the parent of a child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult means an attorney at law who has been retained by or for an adult individual, a power of attorney for the adult individual, or a person or agency authorized by a court to make decisions about services for an adult individual.

(64) "Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities:

(a) The individual has an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria in OAR 411-320-0080 for developmental disability services; and

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(65) "Licensed Medical Practitioner" means any of the following licensed professionals:

(a) Medical Doctor (MD);

(b) Doctor of Osteopathic Medicine (DO);

(c) Licensed Clinical Psychologist (Ph.D or Psy.D);

(d) Nurse Practitioner (NP);

(e) Physician Assistant (PA); or

(f) Naturopathic Doctor (ND).

(66) "LMHA" means "local mental health authority". The LMHA is:

(a) The county court or board of county commissioners of one or more counties that operate a CDDP;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a CDDP; or

(d) The advisory committee for the CDDP covering a geographic service area when managed by the Department.

(67) "Management Entity" means the CDDP or private corporation that operates the Regional Crisis Diversion Program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(68) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(69) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual.

(70) "Monitoring" means the periodic review of the implementation of services identified in an ISP or Annual Plan and the quality of services delivered by other organizations.

(71) "Motor Impairment" means impairment in the ability to move caused by trauma, disease, or any condition affecting the muscular-skeletal system, spinal cord, or sensory or motor nerves.

(72) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(73) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(74) "OAAPI" means the Department of Human Services, Office of Adult Abuse Prevention and Investigation.

(75) "OHP" means Oregon Health Plan.

(76) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(77) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(78) "Older Adult" means an adult at least 65 years of age.

(79) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(80) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540:

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(81) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(82) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(83) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(84) "Program" means "provider" as defined in this rule.

(85) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(86) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(87) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(88) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(89) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(90) "Qualified Professional" means, for the purposes of OAR 411-320-0080, any of the following licensed professionals trained to make a diagnosis of a specific intellectual or developmental disability:

(a) Licensed clinical psychologist (Ph.D., Psy.D.);

(b) Medical doctor (MD);

(c) Doctor of Osteopathic Medicine (DO); or

(d) Nurse Practitioner (NP).

(91) "Quality Management Strategy" means the Department Quality Assurance Plan for meeting the CMS waiver quality assurances as required and defined by 42 CFR 441.301 and 441.302 and State Plan K option quality assurances as required and defined by 42 CFR 441.585.

(92) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(93) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties compromising the region agree are delivered more effectively or automatically on a regional basis.

(94) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(95) "Resident" means an individual that meets the residency requirements in OAR 461-120-0010.

(96) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(97) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of services and supports that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary services rather than purchasing a predefined program;

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(98) "Self-Direction" means that an individual has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(99) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(100) "Service Element" means a funding stream to fund programs or services including, but not limited to, foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive supports, or family support.

(101) "Service Record" means the combined information related to an individual in accordance with OAR 411-320-0070.

(102) "Services Coordinator" means an employee of a CDDP or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is the person-centered plan coordinator of an individual as defined in the Community First Choice state plan.

(103) "SIB-R" means Scales of Independent Behavior-Revised.

(104) "Significantly Subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(105) "Skilled Areas" means a particular assessed score as described in the definition for "adaptive behavior".

(106) "SSI" means Supplemental Security Income.

(107) "Support Services" means "support services" as defined in OAR 411-340-0020.

(108) "These Rules" mean the rules in OAR chapter 411, division 320.

(109) "Transfer" means movement of an individual from one service site to another service site administered or operated by the same provider.

(110) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(111) "U.S. Citizen" means an individual that meets the criteria in OAR 461-120-0110. A U.S. Citizen includes:

(a) An individual born in the United States, Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, American Samoa, or Swains Island;

(b) A foreign-born child less than 18 years of age residing in the United States with his or her birth or adoptive parents, at least one of whom is a U.S. citizen by birth or naturalization;

(c) An individual granted citizenship status by Immigration and Naturalization Services (INS);

(d) A qualified non-citizen as described in OAR 461-120-0125;

(e) A citizen of Puerto Rico, Guam, Virgin Islands, or Saipan, Tinian, Rota, or Pagan of the Northern Mariana Islands;

(f) A national from American Samoa or Swains Island; or

(g) An alien who is a victim of a severe form of trafficking in persons under section 107(b)(a)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(112) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(113) "VABS" means Vineland Adaptive Behavior Scale.

(114) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-320-0200.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0040
Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

(1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), any person may not be denied community developmental disability services on the basis of race, color, creed, gender, national origin, or duration of residence. CDDP contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4) that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Any individual determined eligible for developmental disability services by the CDDP must also be eligible for other community developmental disability services unless entry to the service is subject to diagnostic or developmental disability category or age restrictions based on predetermined criteria or contract limitations.

(2) COORDINATION OF COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other providers as appropriate for the needs of the individual.

(3) CASE MANAGEMENT SERVICES. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of origin must be responsible for case management services unless otherwise negotiated and documented in writing with the mutually agreed upon conditions.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring, monitoring, and protective services. Except as allowed under subsection (e) of this section, the case management program must be provided under an organizational structure that separates case management from other direct services for individuals. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) The CDDP or other organization that provides case management services may also provide other direct services under one or more of the following circumstances:

(A) The CDDP coordinates the delivery of family support services for children less than 18 years of age living in the family home or comprehensive in-home supports for adults.

(B) The CDDP determines that an organization providing direct services is no longer able to continue providing services or the organization providing direct services is no longer willing or able to continue providing services and no other organization is able or willing to continue operations on 30 days' notice.

(C) In order to develop new or expanded direct services for geographic service areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) If the CDDP intends to perform direct services other than family support services or comprehensive in-home support, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP provides family support services or comprehensive in-home supports described in subsection (e)(A) of this section. If the CDDP does not provide one or both of these services, the CDDP must submit a written variance request to the Department for prior approval that describes how the services are going to be provided.

(B) If the circumstances described in subsection (e)(B) of this rule exist, the CDDP must propose a plan to the Department for review, including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If the CDDP providing case management services delivers other services as allowed under subsection (e)(C) of this section, the CDDP must submit a written variance request to the Department for prior approval that includes the action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If the CDDP providing case management services delivers other services as allowed under subsections (e)(B) and (e)(C) of this section, the CDDP must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy of the RFP must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in subsection (g) of this section, the CDDP must submit a written variance request to the Department for prior approval that describes how conflict of roles are to be managed within the CDDP.

(i) If the CDDP also operates a Brokerage, the CDDP must submit a written variance request to the Department for prior approval that includes the mechanism for addressing potential conflict of interest.

(4) FAMILY SUPPORT SERVICES. The CDDP must ensure the availability of a program for family support services in accordance with OAR chapter 411, division 305.

(5) ABUSE AND PROTECTIVE SERVICES.

(a) The CDDP must assure that abuse investigations for adults with intellectual or developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules. When there is reason to believe a crime has been committed, the CDDP must report to law enforcement.

(b) The CDDP must report any suspected or observed abuse of a child directly to the Department or local law enforcement.

(6) FOSTER HOMES. The CDDP must recruit applicants to operate foster homes and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications for a foster home;

(b) All inspection reports completed by the CDDP, including required annual renewal inspection and any other inspections;

(c) General information about the foster home;

(d) Documentation of references, classification information, credit check (if necessary), background check, and training for providers and substitute caregivers;

(e) Documentation of foster care exams for adult foster home providers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the annual license or certificate for the foster home.

(7) CONTRACT MONITORING. The CDDP must monitor all community developmental disability subcontractors to assure that:

(a) Services are provided as specified in the contract between the CDDP and the Department; and

(b) Services are in compliance with these rules and other applicable Department rules.

(8) INFORMATION AND REFERRAL. The CDDP must provide information and referral services to individuals, families of individuals, and interested others.

(9) AGENCY COORDINATION. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(10) SERVICE DELIVERY COMPLAINTS. The CDDP must implement procedures to address individual or family complaints regarding service delivery that have not been resolved using the complaint procedures (informal or formal) of the CDDP subcontractor. The complaint procedures must be consistent with the requirements in OAR 411-318-0015.

(11) COMPREHENSIVE IN-HOME SUPPORTS. The CDDP must ensure the availability of comprehensive in-home supports in accordance with OAR chapter 411, division 330.

(12) EMERGENCY PLANNING. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan, where appropriate;

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any Department offices, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

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

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0060
Individual Rights

(1) The CDDP must have and implement written policies and procedures that protect the individual rights described in section (4) of this rule.

(2) Upon entry into case management and request and annually thereafter, the individual rights described in section (4) of this rule must be provided to an individual and the legal or designated representative of an individual.

(3) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(4) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(b) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(c) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(i) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services and a reassessment of service needs;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(v) Be informed at entry to a case management service and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(5) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(6) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(7) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(8) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(9) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0070
Service Records

(1) CONFIDENTIALITY. The service record for an individual must be kept confidential in accordance with ORS 179.505, 192.515, 192.517, 192.553, and any Department rules or policies pertaining to individual service records.

(2) INFORMATION SHARING. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the CDDP must be made available to other CDDPs responsible for the services of the individual, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) RECORD REQUIREMENTS. In order to meet Department and federal record documentation requirements, the CDDP, through the employees of the CDDP, must maintain a service record for each individual who receives services from the CDDP.

(a) Information contained in the service record must include:

(A) Documentation of any initial referral to the CDDP for services;

(B) The application for developmental disability services. The application for developmental disability services must be completed prior to an eligibility determination and must be on the application form required by the Department or transferred onto CDDP letterhead;

(C) Sufficient documentation to conform to Department eligibility requirements, including notices of eligibility determination;

(D) Documentation of the initial intake interview or home assessment, as well as any subsequent social service summaries;

(E) Documentation of the functional needs assessment defining the support needs for ADL, IADL and other health-related tasks;

(F) Documentation of initial, annual, and requested choice advising;

(G) Documentation of the request for support services and the selection of an available Brokerage within the geographic service area of the CDDP;

(H) Referral information or documentation of referral materials sent to a provider or another CDDP;

(I) Progress notes written by a services coordinator as described in section (4) of this rule;

(J) Medical information, as appropriate;

(K) Entry and exit meeting documentation into any comprehensive service, including any transition plans, crisis diversion plans, or other plans developed as a result of the meeting;

(L) ISP or Annual Plans, including documentation that the plan is authorized by a services coordinator;

(M) Copies of any incident reports initiated by a CDDP representative for any unusual incident that occurred at the CDDP or in the presence of the CDDP representative;

(N) Documentation of a review of unusual incidents received from providers. Documentation of the review of unusual incidents must be made in progress notes and a copy of the incident report must be placed in the file of the individual. If applicable, information must be electronically entered into the SERT system and referenced in progress notes;

(O) Documentation of Medicaid eligibility, if applicable;

(P) The initial and annual level of care determination on a form prescribed by the Department;

(i) For individuals receiving CIIS or 24-hour residential services for children, the CDDP must maintain a current copy of the annual level of care determination or reflect documentation of attempts to obtain a current copy.

(ii) Once an individual is enrolled in a Brokerage, the CDDP must maintain a copy of the initial level of care determination form completed by the CDDP and any annual reviews completed by the CDDP; and

(Q) Legal records, such as guardianship papers, civil commitment records, court orders, and probation and parole information (as appropriate).

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually for each individual receiving case management services from the CDDP enrolled in comprehensive services, family support services, or living with family or independently. Information must include:

(A) The name of the individual, current address, date of entry into the CDDP, date of birth, gender, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (where applicable), and guardianship status; and

(B) The name, address, and telephone number of:

(i) For an adult, the legal or designated representative, family, and other significant person of the individual (as applicable), and for a child, the parent or guardian and education surrogate (if applicable);

(ii) The primary care provider and clinic preferred by the individual;

(iii) The dentist preferred by the individual;

(iv) The school, day program, or employer of the individual (if applicable);

(v) Other agency representatives providing services to the individual; and

(vi) Any court ordered or legal representative authorized contacts or limitations from contact for individuals living in a foster home, supported living program, or 24-hour residential setting.

(4) PROGRESS NOTES. Progress notes must include documentation of the delivery of case management services provided to an individual by a services coordinator. Progress notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries

must be appropriately documented. At a minimum, progress notes must include:

(a) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date services were rendered;

(b) The name of the individual receiving service;

(c) The name of the CDDP, the person providing the services (i.e., the signature and title of the services coordinator), and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. Place of service means the county where the CDDP or agency providing case management services is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(f) For notes pertaining to meetings with or discussions about the individual, the names of other participants, including the titles and agency representation of the participants, if any.

(5) RETENTION OF RECORDS. The CDDP must have a record retention plan for all records relating to the provision of, and contracts for, CDDP services that is consistent with this rule and OAR 166-150-0055. The record retention plan must be made available to the public or the Department upon request.

(a) Financial records, supporting documents, and statistical records must be retained for at least three years after the close of the contract period or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records must be kept for seven years after the date of the death of an individual, if known. If the case is closed, inactive, or the date of death is unknown, the individual service record must be kept for 70 years.

(c) Copies of annual ISPs must be kept for 10 years.

(6) TRANSFER OF RECORDS. In the event an individual moves from one county to another county in Oregon, the complete service record for an individual as described in section (3) of this rule must be transferred to the receiving CDDP within 30 days of transfer. The sending CDDP must ensure that the service record required by this rule is maintained in permanent record and transferred to the CDDP having jurisdiction for the services for the individual. The sending CDDP must retain the following information to document that services were provided to the individual while enrolled in CDDP services:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP, including waiver or state plan eligibility;

(b) Service enrollment and termination forms;

(c) CDDP progress notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the Department.

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

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0080

Application and Eligibility Determination

(1) APPLICATION.

(a) To apply for developmental disability services:

(A) An applicant or the legal representative of the applicant must submit a completed application as defined in OAR 411-320-0020 to the CDDP in the county of origin as defined in OAR 411-320-0020;

(B) The CDDP must receive all documentation required to make an eligibility determination as defined in OAR 411-320-0020. Documentation includes, but is not limited to:

(i) School psychological or comprehensive evaluations since entry into school;

(ii) Medical assessments related to a disability, mental health condition, or physical impairment;

(iii) Psychological evaluations or comprehensive evaluations through private health insurance or other programs;

(iv) Neurological evaluations completed through any entity;

(v) Records from all residential or psychiatric facilities;

(vi) Records completed through application process for other governmental benefits; and

(vii) Administrative medical examinations and reports, as defined in OAR 410-120-0000, determined necessary and authorized by the eligibility specialist.

(C) The applicant or the legal representative of the applicant must provide documentation of U.S. citizenship as defined in OAR 411-320-0020; and

(D) The applicant must reside in Oregon or if the applicant is less than 18 years of age, the applicant and the legal representative of the applicant must reside in Oregon.

(b) The CDDP may stop the intake process if the documents listed in subsection (a)(B) of this section are not submitted within 90 days of the date that the CDDP received the signed and dated Intake Form (SDS 0552). If the CDDP stops the intake process, written notice of the information needed to determine eligibility or a withdrawal letter must be sent to the person identified on the Intake Form (SDS 0552) as the person seeking services and the legal representative of the person seeking services.

(c) The CDDP must consider an application if the criteria in subsection (a) of this section are met. If the criteria in subsection (a) of this section are not met, the CDDP shall deny the application by sending a Notification of Planned Action (SDS 0947).

(d) Upon receipt of a completed application, the CDDP must provide an applicant the Department required Notification of Rights (form SDS 0948) within 10 business days.

(e) A new application may not be required if the file for an individual has been closed for less than 12 months following a closure, denial, or termination and the individual meets all of the criteria in subsection (a) of this section.

(f) The CDDP must identify whether an applicant receives any income.

(A) The CDDP must refer all applicants not currently receiving an OHP Plus benefit package to the local Medicaid office for OHP Plus application and benefit determination.

(B) The CDDP must refer an applicant less than 18 years of age to Social Security if the CDDP identifies that the applicant may qualify for Social Security benefits.

(2) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist to act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(3) INTELLECTUAL DISABILITY. A history of an intellectual disability as defined in OAR 411-320-0020 and significant impairment in adaptive behavior as described in OAR 411-320-0020 must be evident prior to the 18th birthday of an individual for the individual to be eligible for developmental disability services.

(a) Diagnosing an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a licensed clinical or school psychologist with specific training and experience in test interpretation of intellectual functioning and adaptive behavior scales for individuals with intellectual disabilities.

(A) For individuals who have consistent and valid Full Scale IQ results of 65 and less, no assessment of adaptive behavior may be needed if current documentation supports eligibility.

(B) For individuals who have a valid Full Scale IQ or equivalent composite score results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

(C) A General Ability Index result must be used in place of a Full Scale IQ score to determine eligibility if a licensed clinical or school psychologist determines that the General Ability Index is a more valid measure of overall intelligence when compared to the Full Scale IQ score.

(D) A Specific Index IQ result must be used in place of a Full Scale IQ score to determine eligibility if a licensed clinical or school psychologist determines that the Specific Index IQ is a more valid measure of overall intelligence when compared to the Full Scale IQ score.

(E) If an individual is not able to participate in an intelligence test due to intellectual disability, a statement of intellectual disability must be documented by a qualified professional and an adaptive behavior assessment demonstrating a composite score of at least two standard deviations below the mean must be completed.

(b) Impairment of adaptive behavior must be directly related to an intellectual disability and cannot be primarily attributed to other conditions, including but not limited to a mental or emotional disorder, sensory impair-

ment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition and impairment must continue, or be expected to continue, indefinitely.

(4) OTHER DEVELOPMENTAL DISABILITY. A history of an other developmental disability as defined in OAR 411-320-0020 and significant impairment in adaptive behavior as described in OAR 411-320-0020 must be evident prior to the 22nd birthday of an individual for the individual to be eligible for developmental disability services.

(a) Diagnosing an other developmental disability requires a medical or clinical diagnosis of a developmental disability by a qualified professional and significant impairment in adaptive behavior as assessed by standardized tests administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales.

(A) Other developmental disabilities include autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain.

(B) The individual must require training and support similar to that required by an individual with an intellectual disability, which means the individual has a composite or domain score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales.

(b) Significant impairment of adaptive behavior must be directly related to an other developmental disability and cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition and impairment must continue, or be expected to continue, indefinitely.

(5) ELIGIBILITY FOR CHILDREN LESS THAN 7 YEARS OF AGE.

(a) Eligibility determinations for children less than 7 years of age must be based on documentation that is no more than one year old.

(A) The documentation must include:

(i) A valid standardized-and-normed early-childhood assessment, completed by a professional with at least a master's degree and training to administer early childhood assessments, which demonstrates the functioning of the child is at least two standard deviations below the mean in two or more areas of the adaptive behavior described in paragraph (B) of this subsection; or

(ii) When a standardized-and-normed early-childhood assessment is not available or not completed within one year, a medical statement by a licensed medical practitioner that confirms the presence of an other developmental disability that: is a neurological condition or syndrome; originates in and directly affects the brain; and causes or is likely to cause impairment in at least two or more areas of the adaptive behavior described in paragraph (B) of this subsection.

(B) Areas of adaptive behavior include:

(i) Adaptive, self-care, or self-direction;

(ii) Receptive and expressive language or communication;

(iii) Learning or cognition;

(iv) Gross and fine motor; or

(v) Social.

(C) The impairment, condition, or syndrome cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition and impairment must continue, or be expected to continue, indefinitely.

(b) REDETERMINATION OF ELIGIBILITY.

(A) Eligibility for children less than 7 years of age is always provisional.

(i) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than 7 years of age using a standardized and normed early childhood assessment as described in subsection (b)(A)(i) of this section must be completed no later than the child's 9th year birthdate.

(ii) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than 7 years of age using a medical statement by a licensed medical practitioner as described in subsection (b)(A)(ii) of this section must be completed no later than the child's 7th year birthdate.

(B) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(C) The CDDP must notify a child and the legal representative of the child any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(6) ELIGIBILITY FOR SCHOOL AGED CHILDREN. Eligibility for school aged children as defined in OAR 411-320-0020 is always provisional.

(a) Eligibility determinations for school aged children must be completed on children who are at least 5 years of age and who have had school aged testing completed.

(b) Eligibility determinations for school aged children may be completed:

(A) Up to age 18 for school aged children who are provisionally eligible based on a condition of an intellectual disability; and

(B) Up to age 22 for school aged children who are provisionally eligible based on a condition of an other developmental disability.

(c) Eligibility determinations for school aged children must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (3) of this rule; or

(B) A diagnosis and documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (4) of this rule.

(d) Eligibility determinations for school aged children must be based on documentation that is no more than three years old.

(e) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify a school aged child and the legal representative of the child any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(f) REDETERMINATION OF SCHOOL AGED CHILDREN FOR ADULT ELIGIBLITY.

(A) Redetermination of school aged children for adult eligibility must be completed:

(i) Between the ages of 16 and 18 if school aged eligibility was determined based on an intellectual disability as described in section (3) of this rule; or

(ii) Between the ages of 20 and 22 if school aged eligibility was determined based on an other developmental disability as described in section (4) of this rule.

(B) The documentation of an intellectual disability or an other developmental disability must include for individuals less than 22 years of age, information no more than three years old.

(C) If school aged eligibility was determined based on an intellectual disability as described in section (3) of this rule, an intellectual functioning assessment may be used to determine adult eligibility. An adult intellectual functioning assessment completed within the last three years is not needed if the school aged child has:

(i) More than one completed intellectual functioning assessment and all full scale IQ scores are 65 or less as described in section (3)(a)(A) of this rule;

(ii) Impairment in adaptive behavior as identified in section (3) of this rule; and

(iii) Current documentation that supports eligibility.

(D) If school aged eligibility was determined based on an other developmental disability as described in section (4) of this rule, the following criteria must be met:

(i) A current medical or clinical diagnosis of an other developmental disability is required unless all of the following are met:

(I) Documentation of an other developmental disability by a qualified professional as described in section (4) of this rule;

(II) Impairment in adaptive behavior that continues to be directly related to the other developmental disability;

(III) Current documentation that continues to support eligibility; and

(IV) No other medical or mental or emotional disorder.

(ii) If an individual has additional medical or mental or emotional disorders a new assessment may be required.

(iii) An informal adaptive behavior assessment as defined in OAR 411-320-0020 may be completed if all of the following apply:

(I) An assessment of adaptive behavior is required in order to redetermine eligibility;

(II) An assessment of adaptive behavior has already been completed by a licensed school or clinical psychologist; and

(III) The school aged child has obvious significant impairment in adaptive behavior.

(7) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (3) of this rule; or

(B) Documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (4) of this rule.

(b) Documentation for an adult eligibility determination must include:

(A) Information no more than three years old for individuals less than 22 years of age; or

(B) Information obtained after the 17th birthday of an individual for individuals 22 years of age and older.

(c) INTELLECTUAL FUNCTIONING ASSESSMENT.

(A) An intellectual functioning assessment completed on or after the age of 16 may be used to determine adult eligibility.

(B) An adult Intellectual Functioning Assessment may not be needed if an individual has:

(i) More than one completed intellectual functioning assessment and all full scale IQ scores are 65 or less as described in section (3)(a)(A) of this rule; and

(ii) Significant impairment in adaptive behavior as identified in section (3) of this rule.

(C) An adult intellectual functioning assessment may not be needed if an individual has a diagnosis and documentation of an other developmental disability as described in section (4) of this rule.

(d) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify an individual and if applicable the legal representative of the individual any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(C) In the event the eligibility of an adult requires a redetermination, the redetermination must be completed as described in subsections (a), (b), and (c) of this section.

(8) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the functioning of the individual may be impacted by the identified condition must be obtained in order to determine if the significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(9) SECURING EVALUATIONS. In the event that an eligibility specialist has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Department or the designee of the Department shall assist in obtaining additional testing if required to complete the eligibility determination.

(10) PROCESSING ELIGIBILITY DETERMINATIONS. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP must work in collaboration with the individual or the legal representative of the individual to gather historical records related to the intellectual or developmental disability of an individual during intake in order to complete an application for services.

(b) During intake, the CDDP must gather enough information and documentation in order to accept a completed application for developmental disability services within 90 days of the date of intake, except in the following circumstances:

(A) The CDDP is unable to obtain a complete application because the individual or the legal representative of the individual does not collaborate with the Eligibility Specialist or fails to execute an action necessary to obtain a completed application;

(B) There is an emergency beyond the control of the CDDP; or

(C) More time is needed to obtain additional records by the CDDP, the individual, or the legal representative of the individual.

(c) Upon receipt of the completed application, as defined in OAR 411-320-0020, the CDDP must make an eligibility determination unless the following applies and is documented in the progress notes for an individual:

(A) The individual or the legal representative of the individual voluntarily withdraws the application for the individual;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(11) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, within 10 days from the receipt of a completed application, must send or hand deliver a written notification (notice) of the eligibility determination. The notice must be on the following forms prescribed by the Department:

(a) The Notice of Eligibility Determination (form SDS 5103); or

(b) The Notification of Planned Action (form SDS 0947).

(12) REQUESTING A HEARING. An individual or the legal representative of an individual may request a hearing as described in OAR 411-318-0025 if the individual or the legal representative of the individual disagrees with the eligibility determination or redetermination made by the CDDP.

(13) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual and if applicable the legal representative of the individual on forms prescribed by the Department that a transfer of services to a new CDDP has taken place within 10 days of the enrollment date identified on the Developmental Disability Enrollment Form (SDS 0337).

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP.

(c) The receiving CDDP must ensure verification of the eligibility of the individual for developmental disability services in the form of the following:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination; and

(C) Evaluations and assessments supporting eligibility.

(d) In the event that the items in subsection (c) of this section cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. Written verification may include documentation from the electronic payment system of the Department.

(e) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the receiving CDDP may complete a redetermination. The CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(f) If an individual submits an application for developmental disability services and discloses that he or she has previously received developmental disability services in another CDDP and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0090

Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of

an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in the service record for an individual and the CDDP must accurately report enrollment in the Department payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section (4) of this rule.

(a) The CDDP must have procedures for the ongoing involvement of individuals and their requested family member or other representative in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the families of individuals;

(C) Legal or designated representatives (as applicable) and providers of individuals; and

(D) The Department.

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, and as applicable the family members and legal or designated representatives of the individuals, of the minimum case management services that are set out in section (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined as described in OAR 411-320-0080 by an eligibility specialist trained in accordance with OAR 411-320-0030.

(b) A services coordinator must maintain documentation of the referral process of an individual to a provider and if applicable, include the reason the provider preferred by the individual declined to deliver services to the individual.

(c) The CDDP must apply the principles of self-determination to provision of case management services.

(d) An Annual Plan for an individual receiving case management services through the CDDP must be developed and reviewed in accordance with OAR 411-320-0120.

(e) Program services must be authorized in accordance with OAR 411-320-0120.

(f) Services coordinators must monitor services and supports for all individuals enrolled in case management services through the CDDP in accordance with the standards described in OAR 411-320-0130.

(g) If an individual loses OSIPM or OHP Plus eligibility and the individual is receiving case management services through the CDDP, a services coordinator must assist the individual in identifying why OSIPM or OHP Plus eligibility was lost and whenever possible, assist the individual in reestablishing eligibility for OSIPM or OHP Plus. The services coordinator must document efforts taken to assist the individual in reestablishing OSIPM or OHP Plus eligibility in the service record for the individual.

(h) Entry, exit, reductions in benefits or services, and transfers from comprehensive services must be in accordance with OAR 411-320-0110.

(i) Crisis diversion services for an individual receiving case management services through a CDDP must be assessed, identified, planned, monitored, and evaluated by a services coordinator in accordance with OAR 411-320-0160.

(j) Abuse investigations and protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring the implementation of report recommendations.

(k) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(l) Through choice advising, the CDDP must describe case management and other service delivery options within the geographic service area provided to all individuals receiving case management from the CDDP.

(A) Choice advising must occur at least 6 months before the18th birthday of a child.

(B) An individual newly determined eligible for developmental disability services must receive choice advising prior to or concurrent with the initial level of care determination

(C) An individual moving into a county with an existing eligibility determination who is not enrolled in support services must receive choice advising within 10 days of the move or of the CDDP learning of the move.

(D) Choice advising must be provided initially and at least annually thereafter. Annual choice advising must include informing the individual of the right to request access to other available services. Documentation of the discussion must be included in the service record for the individual.

(E) If an individual is not eligible for Community First Choice state plan or waiver services, initial choice advising must inform the individual of the right to access case management from the CDDP or a Brokerage.

(m) A services coordinator must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the Department, CDDP, and CW.

(n) A services coordinator may attend IEP planning meetings or other transition planning meetings for a child when the services coordinator is invited to participate by the family or guardian of the child.

(A) The services coordinator may, to the extent resources are available, assist the family of the child in accessing critical non-educational services that the child or the family of the child may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or the family of the child at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings for students 16 years of age or older, or until the student is no longer enrolled in CDDP case management, to discuss the transition of the individual to adult living and work situations unless the attendance of the services coordinator is refused by the parent or guardian of the child or the individual if the individual is 18 years or older.

(o) The CDDP must ensure that all individuals eligible for and receiving developmental disability services are enrolled in the Department payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) The Department completes the enrollment or termination form for children entering or leaving a licensed 24-hour residential setting that is directly contracted with the Department.

(B) The Department completes the Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving CIIS.

(C) The Department completes the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(p) When appropriate, a services coordinator must facilitate referrals to nursing facilities as described in OAR 411-070-0043.

(q) A services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing facility in accordance with OAR 411-320-0150.

(r) A services coordinator must ensure that all serious events related to an individual are reported to the Department using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(s) When a services coordinator completes a level of care determination, the services coordinator must ensure that OHP Plus and OSIPM eligible individuals are:

(A) Offered and advised of all services available for which they are eligible including, but not limited to, the choice of institutional or community based care, home and community-based waiver and Community First Choice state plan services;

(B) Provided a Notification of Rights (form SDS 0948); and

(C) Have a completed level of care determination that is reviewed annually or at any time there is a significant change in factors that contribute to the level of care assessment.

(t) A services coordinator must participate in the appointment of the health care representative of an individual as described in OAR chapter 411, division 365.

(u) A services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(v) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults as described in OAR chapter 411, division 330, in-home supports for children as described in OAR chapter 411, division 308, or family supports as described in OAR chapter 411, division 305 as required to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support needs and providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the CDDP is not able to reasonably anticipate the need for the variance, the CDDP has 15 business days to submit the variance request to the Department. The variance request must:

(a) Document the reason the service prioritization is necessary, including any alternatives considered;

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals continues to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and a services coordinator must provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or an individual who is currently receiving developmental disability services.

(a) If a family member contacts the CDDP for assistance in locating an individual, the CDDP must refer the family member to the Department. A family member may contact the Department directly.

(b) The Department shall send the family member a Department form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) The Department shall determine:

(A) If the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center;

(B) If the individual is deceased or living;

(C) Whether the individual is currently or previously enrolled in Department services; and

(D) The county in which services are being provided, if applicable.

(d) Within 10 business days from the receipt of the request, the Department shall notify the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department shall send the completed family information form to the individual and the services coordinator.

(f) If the individual is deceased, the Department shall follow the process for identifying the personal representative of the individual as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the Department shall inform the personal representative that the individual is deceased.

(B) If the personal representative is different from the requesting family member, the Department shall contact the personal representative for permission before sharing information about the individual with the requesting family member. The Department must make a good faith effort to find the personal representative and obtain a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management or the CDDP in conjunction with the personal agent when the individual is enrolled in a Brokerage, must facilitate a meeting with the individual to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator or the CDDP in conjunction with the personal agent, as applicable, must assist the individual in evaluating the information to make a decision regarding initiating contact, including providing the information from the form and any relevant history with the family member that may support contact or present a risk to the individual.

(B) If the individual does not have a legal or designated representative or is unable to express his or her wishes, the ISP team of the individual must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual does not wish to have contact, the services coordinator or the CDDP in conjunction with the personal agent (as applicable) must notify the Department. The Department shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual must be within 60 business days from the receipt of the information form from the family member.

(k) The decision by the individual is not appealable.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0100
Coordination of Services

(1) DESIGNATION OF A SERVICES COORDINATOR OR PERSONAL AGENT.

(a) When an individual chooses case management services through a personal agent, the CDDP must send referral information to the appropriate Brokerage within 10 days following the decision of the individual unless a later date is mutually agreed upon by the individual, the Brokerage, and the CDDP. If there is no available Brokerage capacity, the individual may receive case management through the CDDP and receive other available chosen supports until Brokerage capacity becomes available.

(b) When an individual chooses case management services through a services coordinator, the CDDP must designate a services coordinator within five days following the decision of the individual.

(c) When an individual is enrolled in a Brokerage and moves from one CDDP geographic service area to another CDDP geographic service area, the new CDDP must enroll the individual in the Department payment and reporting systems.

(2) CHANGE OF CASE MANAGEMENT PROVIDER.

(a) The CDDP must keep the change of services coordinators to a minimum unless the individual requests the change of services coordinators. If the CDDP changes the assignment of a services coordinator, the CDDP must notify the individual, the legal or designated representative of the individual (as applicable), and all current providers within 10 business days of the change. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

(b) The individual receiving services may request a new services coordinator within the same CDDP or request case management services from a Brokerage.

(A) The CDDP must develop standards and procedures that support timely response to requests for a change of a services coordinator or when referring case management services to a Brokerage.

(B) If another services coordinator is assigned by the CDDP as the result of a request by the individual, the CDDP must notify the individual, the legal or designated representative of the individual (as applicable), and all current providers within 10 business days of the change. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

(3) TERMINATION OF CASE MANAGEMENT SERVICES.

(a) A services coordinator retains responsibility for providing case management services to an individual until the responsibility is terminated in accordance with this rule, until another services coordinator is designated, or until the individual is enrolled in support services. A CDDP must terminate case management services when any of the following occur:

(A) An individual or the legal representative of an individual delivers a signed written request that case management services be terminated or such a request is made by telephone and documented in the service record for the individual. An individual may refuse contact by a services coordinator as well as the involvement of the services coordinator at an ISP meeting, unless the services are mandatory as described in section (5) of this rule.

(B) The individual dies.

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080.

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree. In the case of a child moving into a foster home or 24-hour residential setting, the county of parental residency or court jurisdiction must retain case management responsibility.

(E) An individual cannot be located after repeated attempts by letter and telephone or other means as appropriate to the individual.

(F) An individual is unavailable to participate in planning for a return to community living due to incarceration.

(b) If an individual is being terminated from services for any reason listed in subsection (a) of this section, except in the case of the death of the individual, the CDDP must issue a Notification of Planned Action consistent with OAR 411-318-0020 to notify the individual of the intent of the CDDP to terminate services.

(4) TERMINATION FROM DEPARTMENT PAYMENT AND REPORTING SYSTEMS.

(a) The CDDP must terminate an individual in the Department payment and reporting systems when:

(A) The individual or the legal representative of the individual delivers a signed written request to the Brokerage requesting support services be terminated. An individual who declines support services but wishes to continue receiving developmental disability services through the CDDP is terminated from the Brokerage but is not terminated from developmental disability services;

(B) The individual dies;

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080;

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, developmental disability services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree; or

(E) Notification from the Brokerage that an individual cannot be located after repeated attempts by letter and telephone.

(b) The CDDP retains responsibility for maintaining enrollment in the Department payment and reporting systems for individuals enrolled in support services until the responsibility is terminated as described in this section of this rule.

(5) MANDATORY SERVICES. An individual in developmental disability services must accept the following services:

(a) Case management provided by a services coordinator or personal agent;

(b) Abuse investigations;

(c) The presence of a services coordinator (when applicable) at Department-funded program entry, exit, or transfer meetings, or transition planning meetings required for entry or exit to adult services, including support services and in-home comprehensive supports;

(d) Monitoring of provider programs (when applicable) in accordance with OAR 411-320-0130; and

(e) Services coordinator access to the service record.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0110

Entry and Exit Requirements

(1) ENTRY TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) The Department authorizes entry for children into residential programs, CIIS, and the Stabilization and Crisis Unit. A services coordinator must make referrals for entry and participate in all entry meetings for children in residential programs, CIIS, and the Stabilization and Crisis Unit.

(b) Entry to all other Department-funded programs for individuals must be coordinated and authorized by a services coordinator in accordance with these rules.

(2) LICENSED OR CERTIFIED RESIDENTIAL PLACEMENT SETTING OPTIONS. In accordance with ORS 427.121, a services coordinator must present at least three appropriate licensed or certified residential placement setting options, including at least two different types of licensed or certified residential settings, to an adult individual eligible to receive services in a licensed or certified residential setting prior to the initial placement of the adult individual into a licensed or certified residential setting. The services coordinator is not required to present the licensed or certified residential placement setting options if:

(a) The services coordinator demonstrates that three appropriate licensed or certified residential placement settings or two different types of licensed or certified residential placement settings are not available within the geographic area where the adult individual wishes to reside;

(b) The adult individual selects a licensed or certified residential placement setting option and waives the right to be presented with other licensed or certified residential placement setting options; or

(c) The adult individual is at imminent risk to health or safety in the current licensed or certified residential placement setting.

(3) WRITTEN INFORMATION REQUIRED. Prior to the entry of an individual into comprehensive services, a services coordinator, or the designee of the services coordinator, must provide available and sufficient written information necessary to meet the support needs of an individual to the provider for the individual.

(a) The written information must be provided in a timely manner and include:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of an individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if applicable);

(H) Copies of documents relating to the guardianship or conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation to explain why preferences or choices of the individual may not be honored at that time;

(J) Written documentation that the individual is participating in out-of-residence activities, including public school enrollment for individuals less than 21 years of age; and

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, IEP, and mental health treatment plan (if applicable).

(b) If the individual is being admitted from the family home and the information required in subsection (a) of this section is not available, the services coordinator must ensure that the provider assesses the individual upon entry for issues of immediate health or safety.

(A) The services coordinator must document a plan to secure the information listed in subsection (a) of this section no later than 30 days after entry.

(B) The plan must include a written justification as to why the information is not available and a copy must be given to the provider at the time of entry.

(c) If the individual is being admitted from comprehensive services, the information listed in subsection (a) of this section must be made available prior to entry.

(d) If an individual is admitted to a program for crisis diversion services for a period not to exceed 30 days, subsection (a) of this section does not apply.

(4) ENTRY MEETING. Prior to the date of entry of an individual into a Department-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The members of the ISP team are determined according to OAR 411-320-0120. Findings of the entry meeting must be recorded in the service record for the individual and distributed to the ISP team members. The findings of the entry meeting must include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting;

(c) The date determined to be the date of entry;

(d) Documentation of the participants included in the entry meeting;

(e) Documentation of the pre-entry information required by section (3)(a) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) A written Transition Plan completed by the services coordinator that is in effect for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(5) TRANSFER OR EXIT FROM DEPARTMENT-FUNDED PROGRAMS.

(a) The CDDP must authorize all transfers or exits from Department-funded developmental disability services.

(b) The Department authorizes all transfers or exits from services directly contracted with the Department for 24-hour residential settings for children, CIIS, and the Stabilization and Crisis Unit.

(c) In accordance with ORS 427.121, a services coordinator must present at least three appropriate licensed or certified residential placement setting options, including at least two different types of licensed or certified residential settings, to an adult individual receiving services in a licensed or certified residential setting prior to transferring the adult individual from one placement setting to another placement setting. The services coordinator is not required to present the licensed or certified residential placement setting options if:

(A) The services coordinator demonstrates that three appropriate licensed or certified residential placement settings or two different types of licensed or certified residential placement settings are not available within the geographic area where the adult individual wishes to reside;

(B) The adult individual selects a licensed or certified residential placement setting option and waives the right to be presented with other licensed or certified residential placement setting options; or

(C) The adult individual is at imminent risk to health or safety in the current licensed or certified residential placement setting.

(d) Prior to the transfer or exit date of an individual, the ISP team must meet to review the transfer or exit and to plan and coordinate any services necessary during or following the transfer or exit. The members of the ISP team are determined according to OAR 411-320-0120.

(6) EXIT MEETING. A meeting of the ISP team must precede any decision to exit an individual. Findings of the exit meeting must be recorded in the service record for the individual and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent the exit of the individual from services, unless the individual is requesting the exit;

(f) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary, Reduction, Transfer, or Exit; and

(g) The written plan for services for the individual after the exit.

(7) TRANSFER MEETING. A meeting of the ISP team must precede any decision to transfer an individual. Findings of the transfer meeting must be recorded in the service record for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services for the individual after transfer.

(8) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a Brokerage must be made in accordance with OAR 411-340-0110. Referrals must be made in accordance with Department guidelines and the Department-mandated application and referral form must be used.

(b) The CDDP of the county of origin may find an individual eligible for services from a Brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home;

(C) At the time of initial entry to the Brokerage, the individual is not enrolled in comprehensive services;

(D) At the time of initial entry to the Brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160; and

(E) The individual or the legal representative of the individual has chosen to use a Brokerage for assistance with design and management of personal supports.

(c) An eligible individual must be entered into a Brokerage within 10 days of requesting support services and selecting an available Brokerage within the geographic service area of the CDDP, unless a later date is mutually agreed upon by the individual, the Brokerage, and the CDDP.

(d) The services coordinator must communicate with the Brokerage staff and provide all relevant information upon request and as needed to assist Brokerage staff in developing an ISP that best meets the support needs of the individual including:

(A) A current application or referral on the Department-mandated application or referral form;

(B) A completed level of care determination, if present;

(C) A copy of a current functional needs assessment, if present;

(D) A copy of the eligibility determination;

(E) Copies of financial eligibility information;

(F) Copies of any legal documents, such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(G) Copies of relevant progress notes; and

(H) A copy of any current plans.

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

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0120
Service Planning

(1) PRINCIPLES FOR SERVICE PLANNING. This rule prescribes standards for the development and implementation of an ISP or Annual Plan. An ISP or Annual Plan must:

(a) Be developed in a manner consistent with the principles of self-determination;

(b) Be developed using a person-centered process and in a manner that addresses issues of independence, integration, and productivity;

(c) Enhance the quality of life of the individual with intellectual or developmental disabilities; and

(d) Be consistent with the following principles:

(A) Personal control and family participation. While the service system reflects the value of family member participation in the planning process, adult individuals have the right to make informed choices about the level of family member participation. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(B) Choice and preferences. The planning process is critical in determining the preferences of an individual and the family of the individual for services and supports. The preferences of the individual and the family of the individual must serve to guide the ISP team. The active participation of the individual and input must be facilitated throughout the planning process.

(C) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the preferences of an individual and the family of the individual, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(D) Health and safety. The planning process must also identify strategies to assist an individual in the exercise of the rights of the individual. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the exercise of the rights of the individual while being equally sensitive to protecting the health and safety of the individual.

(E) Children in alternate living situations. When planning for children in 24-hour residential settings or foster care, maintaining family connections is an important consideration. The following must apply:

(i) Unless contraindicated, there must be a goal for family reunification;

(ii) The number of moves or transfers must be kept to a minimum; and

(iii) If the placement of a child is distant from the family of the child, the services coordinator must continue to seek a placement that brings the child closer to the family.

(2) LEVEL OF CARE DETERMINATION.

(a) A services coordinator must assure that an individual has a level of care determination prior to accessing Community First Choice state plan or waiver services. The level of care determination must be made using a Department prescribed form. An initial ISP authorizing Community First Choice state plan or waiver services must be completed no later than the end of the month following the month in which the level of care determination was made or no later than 45 days from the level of care determination.

(b) A services coordinator must assure that a level of care determination is reviewed for every individual enrolled in a comprehensive service:

(A) Within 12 months from the previous Annual Review,

(i) This review must be completed no later than 12 months from the Diagnosis and Evaluation Coordinator (D & E Coordinator) approval date.

(ii) The annual review date may be reset for a date earlier than 12 months from the D & E Coordinator approval date, but not later than 12 months from the D & E Coordinator review date.

(B) No earlier than 60 days prior to the renewal of the ISP.

(C) Any time there is a significant change in a condition that qualified the individual for the level of care.

(c) The level of care assessment must be documented in a progress note in the service record for the individual.

(d) A level of care determination may be made by a services coordinator or a personal agent.

(3) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator or personal agent must complete a functional needs assessment initially and at least annually for each individual who has or is expected to have an ISP.

(a) The functional needs assessment must be completed:

(A) Not more than 45 days from the date that the individual submitted a completed application or the date the CDDP learns of the eligibility of the individual for OHP Plus or OSIPM;

(B) Prior to the development of an initial ISP;

(C) Within 60 days prior to the annual renewal of an ISP; and

(D) Within 45 days from the date an individual requests a new functional needs assessment.

(b) An adult who is enrolled in comprehensive in-home supports as described in OAR chapter 411, division 330 or a child who is enrolled in in-home supports as described in OAR chapter 411, division 308 must participate in a functional needs assessment and provide information necessary to complete the functional needs assessments and reassessments within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-320-0175 and OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual prevent timely participation in the functional needs assessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(c) No fewer than 14 days prior to conducting a functional needs assessment, the CDDP must mail a notice of the assessment process to the individual to be assessed. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(4) INDIVIDUAL SUPPORT PLANS (ISP). Individuals enrolled in waiver or Community First Choice state plan services must have an ISP.

(a) A services coordinator and ISP team must develop the ISP with an individual within 90 days of the submission of a completed application by the individual and at least annually thereafter.

(b) Upon the request for a new functional needs assessment by an individual, a services coordinator must revise the ISP for the individual as needed if a revision of the ISP is requested by the individual. The revision of the ISP must be completed within 30 days from the new functional needs assessment. The revised ISP must be developed with the individual, the legal or designated representative of the individual (as applicable), and other invited ISP team members.

(c) Not more than two weeks after authorization, the CDDP must provide a copy of the most current ISP to the individual, the legal or designated representative of the individual (as applicable), and others as identified by the individual.

(d) PERSON-CENTERED ISP REQUIREMENTS. The person-centered ISP must reflect the services and supports that are important for the individual to meet the needs of the individual identified through a Department approved assessment, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual and the scope of services and supports, the ISP must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the individual;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Provider type;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) Individually identified goals and desired outcomes;

(J) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(K) The risk factors and the measures in place to minimize the risk factors, including back up plans for assistance with support and service needs;

(L) The identity of the person responsible for case management and monitoring the ISP;

(M) A provision to prevent unnecessary or inappropriate services; and

(N) The alternative settings considered by the individual.

(e) The ISP for an individual must be finalized and agreed to in writing by the individual, the legal or designated representative of the individual (as applicable), and others invited by the individual including, but not limited to, providers or other family members.

(f) The ISP must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the people important in supporting the individual.

(g) A services coordinator must track the ISP timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(h) An ISP must be developed, implemented, and authorized as follows:

(A) FOSTER CARE AND 24-HOUR RESIDENTIAL SETTINGS.

(i) A services coordinator must attend and assure that an annual ISP meeting is held for individuals receiving services in foster care or 24-hour residential settings and any associated settings for employment.

(ii) A services coordinator must facilitate the ISP with an individual receiving services through foster care or a 24-hour residential setting and any associated setting for employment.

(iii) If a child is in a 24-hour residential setting directly contracted with the Department, the ISP for the child is coordinated by Department staff.

(iv) A services coordinator must ensure that the ISP for an individual receiving services through foster care or a 24-hour residential setting is developed and updated in accordance with Department guidelines.

(B) SUPPORTED LIVING. A services coordinator must ensure the development of an annual ISP for an adult receiving services in a supported living setting and any associated setting for employment.

(i) The services coordinator must coordinate with the individual, and as applicable the family or legal or designated representative of the individual, in the development of an annual ISP.

(ii) The ISP for an adult receiving services in a supported living setting and any associated setting for employment must include the information described in subsection (d) of this section.

(C) COMPREHENSIVE IN-HOME SUPPORTS FOR ADULTS. A services coordinator must ensure the development of an annual ISP for an individual receiving comprehensive in-home supports.

(i) The services coordinator must coordinate with the individual, and as applicable the family or legal or designated representative of the individual, in the development of an annual ISP.

(ii) The ISP for an individual receiving comprehensive in-home supports must include the information described in subsection (d) of this section and be in accordance with OAR 411-330-0050.

(i) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(5) ANNUAL PLANS. Individuals enrolled in developmental disability services not accessing waiver or Community First Choice state plan services must have an Annual Plan.

(a) A services coordinator must complete an Annual Plan within 60 days of the enrollment of an individual into case management services, and annually thereafter if the individual is not enrolled in any waiver or Community First Choice state plan services.

(b) An Annual Plan must be developed as follows:

(A) For an adult, a written Annual Plan must be documented as an Annual Plan or as a comprehensive progress note in the service record for the individual and consist of:

(i) A review of the current living situation of the individual;

(ii) A review of any personal health, safety, or behavioral concerns;

(iii) A summary of the support needs of the individual; and

(iv) Actions to be taken by the services coordinator and others.

(B) For a child receiving family support services, a services coordinator must coordinate with the child and the family or guardian of the child in the development of an Annual Plan. The Annual Plan for a child receiving family support services must be in accordance with OAR 411-305-0080.

(6) PLANS FOR IN-HOME SUPPORTS FOR CHILDREN. For a child receiving in-home supports, a services coordinator must coordinate with the child and the family or guardian of the child in the development of the an ISP or Annual Plan. The ISP or Annual Plan for a child receiving in-home supports must be in accordance with OAR chapter 411, division 308 and sections (3) and (4) of this rule, as applicable.

(7) PLAN FORMATS. An ISP or Annual Plan developed at an annual or update meeting must be conducted in a manner specified by the Department and on forms required by the Department. In the absence of a Department-mandated form, the CDDP with the affected providers may develop an ISP format that conforms to the rules for the provider and provides for an integrated plan across the funded developmental disability service settings.

(8) PLAN UPDATES. An ISP or Annual Plan must be kept current. A services coordinator, the residential services coordinator for the Department for children in 24-hour residential settings directly contracted with the Department, and CIIS services coordinators for children served through the CIIS waiver must ensure that a current ISP or Annual Plan is authorized and maintained for each individual receiving services.

(a) The ISP or Annual Plan must be kept in the service record for an individual.

(b) ISP or Annual Plan updates must occur as required by this rule and any rules governing the operation of the service.

(c) When there is a significant change, the ISP or Annual Plan must be updated.

(9) ISP REVIEWS. An ISP must be reviewed and revised:

(a) No more than 30 days following a new functional needs assessment;

(b) At least every 12 months;

(c) When the circumstances or needs of an individual change significantly; and

(d) At the request of an individual.

(10) TRANSITION PLAN REVIEWS. A Transition Plan must be reviewed and updated as necessary to make it consistent with section (4) of this rule no more than 60 days from the date of entry to a service setting.

(11) TEAM PROCESS IN SERVICE AND SUPPORT PLANNING. This section applies to an ISP developed for an individual in comprehensive services:

(a) An ISP for an individual in comprehensive services is developed at least by the individual, the legal or designated representative of the individual (as applicable), and the services coordinator. Others may be included as a part of the ISP team at the invitation of the individual. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs of the individual.

(A) Membership on the ISP team must at least conform to this rule and any relevant provider rules. An individual may include additional participants, friends, or significant others on the ISP team.

(B) The individual may raise an objection to the inclusion of a particular person or provider on the ISP team. When the individual raises objections to a person, the ISP team must respect the request of the individual. In order to assure adequate planning, provider representatives are necessary informants to the ISP team.

(b) An ISP developed by an ISP team must respect and honor individual choice in the development of a meaningful plan.

(c) In circumstances where an individual is unable to express his or her opinion or choice using words, behaviors, or other means of communication and the individual does not have a legal or designated representative, the ISP team is empowered to make a decision on behalf of the individual.

(d) No one member of an ISP team has the authority to make decisions for the ISP team.

(e) Consensus amongst ISP team members is prioritized. When consensus may not be reached, majority agreement is used. For purposes of reaching a majority agreement, a provider, family member, CDDP, or designated representative are considered as one member of the ISP team.

(f) Any objections to decisions of the ISP team by a member of the ISP team must be documented in the ISP.

(g) The legal or designated representative of an individual directing services for the individual (as applicable) may not also be a paid provider for the individual.

(h) An ISP is authorized by a services coordinator using a person-centered planning process and with agreement by the individual and the legal or designated representative of the individual (as applicable).

(i) An individual or the legal representative of the individual retains the right to consent to treatment and training and to note any specific areas of the ISP that they object to and wish to file a complaint.

(j) ISP team members must inform the services coordinator whenever there are significant needs or changes or there is a crisis or potential for a crisis. The services coordinator must reconvene the ISP team if ISP adjustments are required due to a significant change in the support needs or desired goals of an individual.

Stat. Auth.: ORS 409.050 & 430.662

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

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0130

Case Management Contact, Site Visits, and Monitoring of Services

(1) CASE MANAGEMENT CONTACT. Every individual who has an ISP must have a case management contact no less than once every three months. Individuals with significant health and safety risks as identified in the ISP must have more frequent case management contact. At least one case management contact per year must be face to face. If an individual agrees, other case management contact may be made by telephone or by other interactive methods. The outcome of the case management contact must be recorded in the progress notes. The purpose of the case management contact is:

(a) To assure known health and safety risks are adequately addressed;

(b) To assure that the support needs of an individual have not significantly changed; and

(c) To assure that an individual is satisfied with the current supports.

(2) SITE VISITS.

(a) The CDDP must ensure that site visits are conducted at each child or adult foster home, each 24-hour residential setting, and each employment site licensed or certified and endorsed (as applicable) by the Department to serve individuals with intellectual or developmental disabilities.

(A) The CDDP must establish a quarterly schedule for site visits to each child or adult foster home and each 24-hour residential setting.

(B) The CDDP must establish an annual schedule for site visits to each employment site. If a visit to an integrated employment site disrupts the work occurring, a mutually agreed upon location for the site visit must be arranged.

(b) The CDDP must establish an annual schedule for visits with individuals receiving services in a supported living setting. If an individual opposes a visit to his or her home, a mutually agreed upon location for the visit must be arranged.

(c) Site visits may be increased for any of the following reasons including, but not limited to:

(A) Increased certified and licensed capacity;

(B) New individuals receiving services;

(C) Newly licensed or certified and endorsed provider;

(D) An abuse investigation;

(E) A serious event;

(F) A change in the management or staff of the licensed or certified and endorsed site;

(G) An ISP team request;

(H) Individuals receiving services are also receiving crisis diversion services; or

(I) Significant change in the functioning of an individual who receives services at the site.

(d) The CDDP must develop a procedure for the conduct of the site visits.

(e) The CDDP must document site visits and provide information concerning the site visits to the Department upon request.

(f) If there are no Department-funded individuals at the site, a visit by the CDDP is not required.

(g) When a provider is a Department-contracted and licensed, certified, and endorsed 24-hour residential setting for children and the children's residential services coordinator for the Department is assigned to monitor services, the children's residential services coordinator and the CDDP shall coordinate the site visit. If the site visit is made by Department staff, Department staff shall provide the results of the site visit to the local services coordinator.

(h) The Department may conduct site visits on a more frequent basis than described in this section based on program needs.

(3) MONITORING OF SERVICES: A services coordinator must conduct monitoring activities using the framework described in this section.

(a) For all individuals receiving case management at a CDDP with an ISP that authorizes waiver or Community First Choice state plan services, an ongoing review of the ISP must determine whether the actions identified by the ISP team are being implemented by the provider and others. The review of an ISP must include an assessment of the following:

(A) Are services being provided as described in the ISP and do the services result in the achievement of the identified action plans?

(B) Are the personal, civil, and legal rights of the individual protected in accordance with these rules?

(C) Are the personal desires of the individual, and as applicable the legal or designated representative or family of the individual, addressed?

(D) Do the services provided for in the ISP continue to meet what is important to, and for, the individual?

(E) Do identified goals remain relevant and are the goals supported and being met?

(b) For an individual who is not enrolled in a Brokerage and who resides in a 24-hour residential setting, supported living setting, foster care, or is receiving employment services, the monitoring of services may be combined with the site visits described in section (2) of this rule. In addition:

(A) During a one year period, the services coordinator must review, at least once, services specific to health, safety, and behavior, using questions established by the Department.

(B) A semi-annual review of the process by which an individual accesses and utilizes funds must occur, using questions established by the Department. The services coordinator must determine whether financial records, bank statements, and personal spending funds are correctly reconciled and accounted for.

(i) The financial review standards for 24-hour residential settings are described in OAR 411-325-0380.

(ii) The financial review standards for adult foster homes are described in OAR 411-360-0170.

(iii) Any misuse of funds must be reported to the CDDP and the Department. The Department determines whether a referral to the Medicaid Fraud Control Unit is warranted.

(C) The services coordinator must monitor reports of serious and unusual incidents.

(c) For an individual receiving employment services, the services coordinator must also assess the progress of the individual toward a path to employment.

(d) The frequency of service monitoring must be determined by the needs of an individual. Events identified in section (2)(c) of this rule provide indicators that may potentially increase the need for service monitoring.

(e) For an individual receiving only case management services and not enrolled in any other funded developmental disability services, the services coordinator must make contact with the individual at least once annually.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, a progress note in the service record must document how contact was achieved.

(B) The services coordinator must document annual contact in the Annual Plan as described in OAR 411-320-0120.

(C) If the individual has any identified high-risk medical issue including, but not limited to, risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions as described in the Annual Plan.

(D) Any follow-up activities must be documented in a progress note.

(E) If state plan personal care services as described in OAR 411-034-0070 are authorized in an Annual Plan, the services must be monitored as described in OAR 411-034-0070.

(4) MONITORING FOLLOW-UP. A services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in 24-hour residential settings directly contracted with the Department when the Department conducts the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the ISP or Annual Plan for an individual or that the service needs of an individual have changed since the last review, the services coordinator must initiate action to update the ISP or Annual Plan of the individual.

(b) If there are concerns regarding the ability of a provider to provide services, the CDDP, in consultation with the services coordinator, must determine the need for technical assistance or other follow-up activities, such as coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from the Department for licensing or other administrative support, or meeting with the executive director or board of directors of the provider.

(5) DEPARTMENT NOTIFICATION. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(a) A provider demonstrates substantial failure to comply with any applicable licensing, certification, or endorsement rules for Department-funded programs;

(b) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by the Department is required; or

(c) Any individual receiving Department-funded developmental disability services dies. Notification must be made to the Director of the Department within one business day of the death. Entry must be made into the Serious Event Review System according to Department guidelines.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; SPD 11-2011, f. & cert. ef. 6-2-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0160
Crisis Diversion Services

(1) CRISIS DIVERSION SERVICES. The CDDP must, in conjunction with the regional partners of the CDDP, provide crisis diversion services for adults and children with intellectual or developmental disabilities who are enrolled in developmental disability services and are eligible for crisis diversion services as described in section (3) of this rule and experiencing a crisis risk factor.

(2) CRISIS RISK FACTORS. An individual is in crisis when one or more of the following risk factors are present:

(a) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(b) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(c) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(d) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;

(e) An individual experiences a loss of home due to a protective service action; or

(f) An individual is not receiving the necessary supports to address significant safety risks to others including, but not limited to:

(A) A pattern of physical aggression serious enough to cause injury;

(B) Fire-setting behaviors; or

(C) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(3) ELIGIBILITY FOR CRISIS DIVERSION SERVICES. The CDDP must ensure the determination of the eligibility of individuals to receive crisis diversion services and must ensure eligibility information is made available to ISP team members upon request and to Regional Crisis Diversion Programs upon each referral. An individual is eligible for crisis diversion services when:

(a) The individual is enrolled in developmental disability services;

(b) A crisis exists as described in section (2) of this rule;

(c) There are no appropriate alternative resources available;

(d) The crisis is not primarily related to a significant mental or emotional disorder or substance abuse; and

(e) The individual meets at least one of the following criteria:

(A) The adult is court committed to the Department under ORS 427.215 through 427.306.

(B) The adult meets one of the crisis risk factors as described in section (2) of this rule.

(C) The child is at imminent risk of out of home placement.

(D) The child is in need of out of home placement.

(E) The child requires supports to return home from out of home placement.

(4) FUNDS FOR CRISIS DIVERSION SERVICES.

(a) Funds for crisis diversion services must not supplant existing funding.

(b) Purchased goods or services must only be those necessary to resolve the crisis.

(c) Crisis diversion services must only be used when no appropriate alternative resources are available to resolve the crisis situation. The CDDP or the Regional Crisis Diversion Program administering the crisis diversion service, in consultation with the ISP team, must determine the appropriateness of alternative resources based on consideration of individual support needs, proximity to actively involved family members, access to other necessary resources, and cost effectiveness.

(5) ALLOWABLE SHORT-TERM EXPENDITURES. Crisis diversion expenditures are allowed when the following criteria are met:

(a) The services and expenditures are minimally necessary to address the imminent health and safety risks associated with the support need of the individual;

(b) The expenditures are limited to those services and items the individual would otherwise have access to via the Community First Choice state plan, except that funding is not immediately accessible to fund such services;

(c) The region or case management entity has conducted a needs assessment of the individual; and

(d) Expenditures are in alignment with the expenditure guidelines or in accordance with the associated needs assessment tool for residential service settings.

(6) SERVICE LIMITATIONS. The following expenditures must not be made with crisis diversion services funds:

(a) Household appliances;

(b) Services covered under existing provider contracts with the CDDP or Department;

(c) Health care services covered by Medicaid, Medicare, or private medical insurance;

(d) Services provided by the parent of a child or the spouse of an adult;

(e) Funding for items or services when the individual has resources available to meet the identified needs;

(f) Services or purchases prohibited in program rules; and

(g) Services or purchases that exceed the expenditure guidelines or rate determined by the individual needs assessment.

(7) SERVICE AUTHORIZATION. The CDDP or Regional Crisis Diversion Program must authorize the utilization of crisis diversion services.

(a) Prior to initiating crisis diversion services, the CDDP or the Regional Crisis Diversion Program must document the eligibility of an individual for crisis diversion services, the alternative resources considered, and why those resources were not appropriate or available. This assures that crisis diversion services are utilized only when no appropriate alternative resources are available.

(b) The CDDP or the Regional Crisis Diversion Program must authorize services that exceed 90 days duration and document the authorization in writing within the service record for the individual.

(c) The Department must authorize adaptations or alterations of fixed property that exceed $5,000. Authorization by the Department is based upon the recommendation of the CDDP or the Regional Crisis Diversion Program.

(d) The Department may, at the discretion of the Department, exercise authority under ORS 427.300 to direct any individual who is court committed to the Department under ORS 427.290 to the facility best able to provide services and supports to the individual. The Department shall consult with any CDDP, the Regional Crisis Diversion Program, or provider affected by this decision, prior to placement of the individual.

(8) ADMINISTRATION OF CRISIS DIVERSION SERVICES. The CDDP and the Regional Crisis Diversion Program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of people or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(9) MONITORING OF CRISIS DIVERSION SERVICES.

(a) The CDDP must monitor the delivery of crisis diversion services as specified in the crisis plan and the plan of care for the individual. Monitoring must be done through contact with the individual, any providers, and the family of the individual. The monitoring contact must include the collection of information regarding supports provided and progress toward outcomes that are identified in the crisis plan. Monitoring must be documented in the service record for the individual.

(b) The CDDP must coordinate with providers or other ISP team members to evaluate the impact of crisis diversion services upon the individual and must ensure needed changes are recommended to the ISP team.

(c) The Department may monitor crisis diversion services through reports received pursuant to sections (10) and (11) of this rule and OAR 411-320-0180.

(10) RECORD KEEPING AND REPORTING PROCEDURES.

(a) The CDDP or the Regional Crisis Diversion Program must ensure the crisis plan is developed in partnership with the ISP team and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual, including name, address, age, and name of parent or legal representative (as applicable);

(B) Description of the circumstances for which crisis diversion services were requested to clearly specify how the individual is eligible to receive crisis diversion services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds and why the resources or alternatives were not appropriate or were not available in meeting the needs of the individual in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, including:

(i) The frequency of the provision or purchase of goods or services;

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved, including identification of benchmarks that may be used to determine whether the outcome has been achieved and maintained.

(b) The CDDP must ensure the documentation of the ISP team approved modifications to the ISP for the individual that outline how the crisis is to be addressed through the use of crisis diversion services.

(c) The CDDP must ensure the documentation of monitoring contacts described in section (9)(a) of this rule.

(d) The CDDP must maintain a current copy of the level of care determination when an individual eligible for crisis diversion services is receiving home and community-based waiver or Community First Choice state plan services, or as otherwise instructed by the Department.

(11) REPORTING REQUIREMENTS. The CDDP or Regional Crisis Diversion Program must report, using the accepted Department payment and reporting systems, the following information to the Department by the tenth business day of the month following each month in which crisis diversion services were provided and paid:

(a) Individuals for whom crisis diversion services were provided;

(b) Individual services provided and paid; and

(c) Total cost by type of service.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0170
Contractor Disputes

(1) When a dispute exists between a CDDP and a subcontracted provider regarding the terms of the contract or the interpretation of administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(a) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(A) The party requesting mediation must send a written request to the Director of the Department, the CDDP Director, and the Executive Director of the provider, unless other people are named as official contact people in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(B) Department staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(i) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(ii) Development of rules and procedures that shall be followed by all parties during the mediation; and

(iii) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(C) Unless otherwise agreed to by all parties:

(i) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(ii) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(b) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department shall prepare the final report. A final report on each mediation must be retained on file at the Department.

(2) A provider may appeal the imposition of a disputed term or condition in the contract if the provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in the model contract. The appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Director of the Department within 30 days after the effective date of the contract requirement.

(a) A copy of the notice of appeal must be sent to the CDDP. The notice of appeal must include:

(A) A copy of the contract and any pertinent contract amendments;

(B) Identification of the specific terms that are in dispute; and

(C) A complete written explanation of the dissimilarity between terms.

(b) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the provider until the appeal process is concluded.

(c) The Director of the Department must offer to mediate a solution in accordance with the procedure outlined in sections (1)(a) and (1)(b) of this rule.

(A) If a solution cannot be mediated, the Director of the Department shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include, at a minimum:

(i) A representative from the Department;

(ii) A representative from another CDDP; and

(iii) A representative from another provider organization.

(B) The panel must meet with the parties, consider the respective arguments, and send written recommendations to the Director of the Department within 45 business days after an impasse is declared, unless the Director of the Department grants an extension.

(C) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner deemed necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(D) The Director of the Department must notify all parties of his or her decision within 15 business days from the receipt of the recommendations of the panel. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(d) Notwithstanding subsection (c) of this section, the Director of the Department has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Director of the Department finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

(e) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(A) The request must be made in writing to the Director of the Department. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(B) The Department must notify all parties of the decision to approve an expedited appeal process within two business days.

(C) If an expedited process is approved, the Department shall notify all parties of the decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; Administrative correction 6-28-11; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0175
Individual Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL COMPLAINTS.

(a) The CDDP must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(b) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(c) Upon entry into case management and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry into case management and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695
Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 30-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SPD 8-2012, f. 6-27-12, cert. ef. 6-30-12; SPD 6-2013, f. & cert. ef. 4-2-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0190
Program Review

(1) The Department may review the CDDP implementation of these rules as provided in OAR 411-320-0180 at least every two years or more frequently as needed to ensure compliance.

(2) Following a Department review, the Department shall issue a report to the CDDP identifying areas of compliance and areas in need of improvement.

(3) If, following a review, the CDDP is not in substantial compliance with these rules, the CDDP must respond to a plan of improvement within 45 days from the receipt of the plan of improvement or in the time specified by the Department. The Department may conduct additional reviews as

necessary to ensure improvement measures have been achieved. The Department may offer, or the CDDP may request, technical assistance or training.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 28-2011, f. 12-28-11, cert. ef. 1-1-12; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

411-320-0200
Variances

(1) A variance that does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws may be granted to the CDDP if there is a lack of resources to meet the standards required in these rules and the alternative services, methods, concepts, or procedures proposed shall result in services or systems that meet or exceed the standards in these rules. All variances must be submitted to the Department and approved by the Department prior to implementation.

(2) The CDDP requesting a variance must submit a written 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) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

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

(e) Signed documentation from the CDDP reflecting the justification for the proposed variance.

(3) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the CDDP within 45 days from the receipt of the variance request by the Department.

(4) The CDDP may request an administrator review of the denial of a variance request by sending a written request for review to the Director. The decision of the Director is the final response from the Department.

(5) The Department determines the duration of the variance.

(6) The CDDP may implement a variance only after written approval from the Department. The intergovernmental agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Agency Certification and Endorsement, 24-Hour Residential Settings, and Supported Living Settings
Adm. Order No.: APD 42-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Amended: 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0040, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0120, 411-325-0180, 411-325-0185, 411-325-0230, 411-325-0300, 411-325-0360, 411-325-0390, 411-325-0430, 411-325-0460, 411-328-0550, 411-328-0560, 411-328-0570, 411-328-0620, 411-328-0630, 411-328-0640, 411-328-0650, 411-328-0660, 411-328-0680, 411-328-0690, 411-328-0700, 411-328-0710, 411-328-0715, 411-328-0720, 411-328-0750, 411-328-0760, 411-328-0770, 411-328-0780, 411-328-0790
Rules Repealed: 411-325-0320, 411-325-0330, 411-325-0400, 411-328-0740, 411-328-0800, 411-323-0010(T), 411-323-0020(T), 411-323-0030(T), 411-323-0035(T), 411-323-0050(T), 411-323-0060(T), 411-323-0070(T), 411-325-0020(T), 411-325-0060(T), 411-325-0110(T), 411-325-0120(T), 411-325-0300(T), 411-325-0390(T), 411-325-0430(T), 411-325-0460(T), 411-328-0560(T), 411-328-0700(T), 411-328-0720(T), 411-328-0750(T), 411-328-0760(T), 411-328-0770(T), 411-328-0790(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in:

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

OAR chapter 411, division 325 for 24-hour residential settings for individuals with intellectual or developmental disabilities; and

OAR chapter 411, division 328 for supported living settings for individuals with intellectual or developmental disabilities.

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;

Implement Senate Bill 22 by updating the rights of individuals and providing a consistent dispute resolution process;

Incorporate the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan (ISP);

Align the supported living services rules for behavior support services with the rules for 24-hour residential services by updating the requirements for documenting and reporting occurrences of injury, accidents, acts of physical aggression, protective physical intervention, or unusual incidents;

Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the proposed rulemaking;

Remove references to proctor care services;

Update provider qualifications and personnel requirements;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-323-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide person-centered services to individuals with intellectual or developmental disabilities in a community-based service setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential settings;

(b) OAR chapter 411, division 328 for supported living settings; and

(c) OAR chapter 411, division 345 for employment.

(2) To provide person-centered services to individuals with intellectual or developmental disabilities in the community-based service settings described in section (1) of this rule, agencies must have:

(a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement for each service setting as described in OAR 411-323-0035;

(c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(d) For each licensed site or geographic location where direct services are to be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 323:

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(5) "Agency" means a public or private community agency or organization that is approved by the Department to provide services to individuals with intellectual or developmental disabilities in a community-based service setting.

(6) "Applicant" means a person, agency, corporation, or governmental unit who applies for certification and endorsement to operate an agency providing services to individuals with intellectual or developmental disabilities in a community-based service setting.

(7) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(8) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures the accounting activities are in conformity with generally accepted accounting principles.

(9) "Board of Directors" means the group of people formed to set policy and give directions to an agency designed to provide services to individuals with intellectual or developmental disabilities in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(10) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(11) "Certificate" means the document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of services in an endorsed service setting.

(12) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(13) "Child" means an individual who is less than18 years of age that has a provisional determination of an intellectual or developmental disability.

(14) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(15) "Complaint" means "complaint" as defined in OAR 411-318-0005.

(16) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency; or

(b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(18) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.

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

(20) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(21) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(22) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(23) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program rules.

(24) "Executive Director" means the person designated by a board of directors or corporate owner of an agency that is responsible for the administration of the services provided by the agency.

(25) "Founded Report" means the determination by the Department or Law Enforcement Authority, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(26) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(27) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(28) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.

(29) "Informal Conference" means the discussion between the Department and an applicant or an agency that is held prior to a hearing to address any matters pertaining to the hearing. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

(30) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(31) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(32) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(33) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.

(34) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.

(35) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(36) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.

(37) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an agency following the enrollment of the agency as described in OAR chapter 411, division 370.

(38) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(39) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(40) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(41) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(42) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(43) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(44) "Program Rules" mean the rules in:

(a) OAR chapter 411, division 325 for 24-hour residential settings;

(b) OAR chapter 411, division 328 for supported living settings; and

(c) OAR chapter 411, division 345 for employment.

(45) "Program Services" mean the person-centered services provided in a community-based setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential settings;

(b) OAR chapter 411, division 328 for supported living settings; and

(c) OAR chapter 411, division 345 for employment.

(46) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard the person, property, and funds of the individual.

(47) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(48) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(49) "Revocation" means the action taken by the Department to rescind:

(a) A certificate to operate an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to provide program services after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.

(50) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(51) "Service Setting" means the community-based settings as described in:

(a) OAR chapter 411, division 325 for 24-hour residential settings;

(b) OAR chapter 411, division 328 for supported living settings; and

(c) OAR chapter 411, division 345 for employment.

(52) "Staff" means a paid employee responsible for providing services to an individual whose wages are paid in part or in full with funds subcontracted with the CDDP or contracted directly through the Department.

(53) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(54) "Suspension" means an immediate temporary withdrawal of the:

(a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program rules; or

(b) Endorsement for an agency to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program rules.

(55) "These Rules" mean the rules in OAR chapter 411, division 323.

(56) "Unacceptable Background Check" means an administrative process that produces information related to the background of an agency that precludes the agency from being certified or endorsed for one or more of the following reasons:

(a) Under OAR 407-007-0275, the agency or any person holding 5 percent or greater ownership interest in the agency has been found ineligible due to ORS 443.004; or

(b) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(57) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the agency.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0030
Certification

(1) CERTIFICATION. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be certified by the Department under these rules before establishing, conducting, maintaining, managing, or operating an agency.

(a) Certificates are not transferable.

(b) The Department issues or renews a certificate to an agency found to be in compliance with these rules and the corresponding program rules. The certificate is effective for five years from the date issued unless sooner revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) For the purpose of certification, any applicant or person with an ownership interest in an agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) A review of the agency is conducted by the Department prior to the issuance or renewal of a certificate.

(2) CURRENT AGENCY CERTIFICATION.

(a) All agencies providing program services as of July 1, 2011 are certified for five years unless the certificate is sooner revoked or suspended.

(b) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for people who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving services.

(3) INITIAL CERTIFICATION. Notwithstanding section (2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to the proposed date of provision of program services to individuals. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

(A) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(B) A financial plan that includes financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; or

(C) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(c) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the expense of the agency, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the contract the agency has with the Department including, but not limited to, automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services and the divisions, officers, and employees of the Department as additionally insured on any insurance policies required by their contract with respect to agency activities being performed under the certification of the agency. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the insurance company of any insurance coverage required by their contract, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing certificate for the agency. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

(i) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(ii) A financial plan that includes audits for the last two years as described in section (5) of this rule; and

(iii) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(B) Identify the scope of program services the agency provides and provide proof of endorsement for each program service as described in OAR 411-323-0035;

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules; and

(D) Demonstrate proof of continued liability and operational insurance coverage as described in section (3)(d) of this rule.

(b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(c) If the renewal application is not submitted to the Department prior to the date the certificate expires, the agency is considered a non-certified Medicaid agency and is subject to termination of their Medicaid Agency Identification Number.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must obtain an audit at least once during the biennium. On alternating years, the agency may obtain an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.

(6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency expires five years following the date of issuance.

(7) CERTIFICATE TERMINATION. The certificate automatically terminates on the date agency operation is discontinued or if there is a change in ownership.

(8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Department in writing of any pending change in the ownership, legal entity, legal status, or management corporation of the agency.

(b) A new certificate is required upon a change in the ownership, legal entity, legal status, or management corporation of the agency. The agency must submit an application as described in section (3) of this rule to the Department at least 30 days prior to a change in ownership, legal entity, legal status, or management corporation.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on a certificate includes one or more of the following actions:

(a) A condition as described in section (11) of this rule;

(b) Denial, revocation, or refusal to renew a certificate as described in section (12) of this rule; or

(c) Immediate suspension of a certificate as described in section (13) of this rule.

(11) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of

condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(c) Conditions that the Department may impose on a certificate include, but are not limited to:

(A) Restricting the total number of individuals to whom an agency may provide services;

(B) Restricting the total number of individuals to whom an agency may provide program services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the certificate of the agency. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding program services, agency finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

(I) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS Chapter 183, this rule, and 443.440 for a 24-hour residential setting, upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(14) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, the agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspen-

sion, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (14) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0035
Endorsement

(1) ENDORSEMENT REQUIRED. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be endorsed by the Department under these rules before establishing, conducting, maintaining, managing, or operating a service setting.

(a) Endorsements are not transferable or applicable to any other service setting. Separate endorsements are required for each program service provided by a certified agency. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for an additional endorsement as described in section (3) of this rule.

(b) Each geographic location where program services are provided must be reported by the agency to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department issues or renews an endorsement to a certified agency found to be in compliance with these rules and the corresponding program rules. The effective date for each endorsement corresponds with the effective date for the certification of the agency unless sooner revoked or suspended.

(d) If a certified agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) For the purpose of endorsement, any applicant or person with an ownership interest in a certified agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) A review of the certified agency is conducted by the Department prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All certified agencies providing program services as of July 1, 2011 are endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) A certified agency intending to provide additional program services after July 1, 2011 must apply for endorsement as described in section (3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care treatment facilities for individuals who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the certified agency intends to provide and all geographic locations where program services are to be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Each licensed site or geographic location where direct services are to be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program services that the certified agency provides and all geographic locations where program services are provided. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program rules.

(b) Only existing program services are endorsed on renewal. A certified agency requesting to provide additional program services must apply for initial endorsement as described in section (3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) A certified agency may not provide program services if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the certificate of the agency.

(5) EXISTING ENDORSEMENT — ADDING A GEOGRAPHIC LOCATION. Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location. The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement corresponds with the effective date of the certification of the agency.

(7) ENDORSEMENT TERMINATION. Endorsement automatically terminates on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement is required upon a change of the certification of an agency. The recertified agency must submit an application for endorsement as described in section (3) of this rule to the Department at least 30 days prior to a change of the certification of the agency including, but not limited to, a change in ownership, legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on an endorsement includes one or more of the following actions:

(a) A condition as described in section (10) of this rule:

(b) Denial, revocation, or refusal to renew an endorsement as described in section (11) of this rule; or

(c) Immediate suspension of an endorsement as described in section (12) of this rule.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to an endorsement upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(c) Conditions that the Department may impose on an endorsement include, but are not limited to:

(A) Restricting the total number of individuals to whom an agency may provide services;

(B) Restricting the total number of individuals to whom an agency may provide program services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF ENDORSEMENT CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the endorsement of program services. The written notice of endorsement conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions. The request for a hearing must be in writing.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of the written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of services;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding program services, agency finances, or funds belonging to the individuals;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

(I) In addition to, or in lieu of a hearing, an agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of the immediate suspension of the endorsement. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the endorsed agency must request a hearing within 21 days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(13) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, the agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in subsection (13) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0040
Inspections and Investigations

(1) Agencies certified and endorsed under these rules must allow the following types of investigations and inspections:

(a) Quality assurance, onsite inspections, and certificate renewal;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the designee of the Department, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the designee of the Department, or proper authority; and

(b) Submitted to, or be made available for review by, the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or the designee of the Department has determined to initiate an investigation, the agency may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an "internal investigation" is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or the designee of the Department shall conduct abuse investigations as described in OAR 407-045-0250 to 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, the designee of the Department, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate agency. The agency must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0050
Agency Management and Personnel Practices

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, provider, or subcontractor, including relief providers and volunteers, has been identified as an accused person in an abuse investigation or when an allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or provider may not retaliate against any staff member or subcontractor including relief providers and volunteers that report in good faith suspected abuse or retaliate against the individual with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to the reporting person for actual damages and, in addition, is subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by an agency, provider, or person involved in a report against the person making the report or against the individual because of the report and includes, but is not limited to:

(A) Discharge or transfer from the agency, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for program services; or

(D) Restriction or prohibition of access to the agency or the individuals receiving services by the agency.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff, providers, substitute caregivers, independent contractors, and volunteers are mandatory reporters.

(b) The agency must notify all staff, providers, substitute caregivers, independent contractors, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all staff, providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated adult abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in services, must have an approved background check in accordance with 407-007-0200 to 407-007-0370 and ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.

(c) Any person described above in section (6) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any staff member providing services to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Consent to and pass a background check by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule, and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to, the Department;

(A) Background rechecks must be performed biannually, or as needed, if a report of criminal activity has been received by the Department.

(B) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple locations within the qualified entity as defined in OAR 407-007-0210. The Background Check Request form must be completed by the subject individual to show intent to work at various locations.

(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:

(d) Be legally eligible to work in the United States;

(e) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill;

(f) Understand requirements of maintaining confidentiality and safeguarding individual information;

(g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General;

(h) Be literate and capable of understanding written and oral orders;

(i) Be able to communicate with individuals, health care providers, service coordinators, and appropriate others;

(j) Be able to respond to emergency situations at all times;

(k) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;

(l) Receive 12 hours of job-related in-service training annually;

(m) Have clear job responsibilities as described in a current signed and dated job description; and

(n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;

(e) Written documentation of any founded report of child abuse or substantiated adult abuse;

(f) Written documentation of 12 hours of job-related in-service training annually;

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and

(h) For staff operating vehicles that transport individuals, documentation of a valid license to drive and proof of vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(10) DISSOLUTION OF AN AGENCY. A representative of the governing body or owner of an agency must notify the Department in writing 30 days prior to the dissolution of the agency and make appropriate arrangements for the transfer of individual records.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0060
Policies and Procedures

(1) INDIVIDUAL RIGHTS.

(a) The agency must have and implement written policies and procedures that protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of the individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(I) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services and a reassessment of service needs;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(Y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote,

marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(f) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) HEALTH. The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) INDIVIDUAL AND FAMILY INVOLVEMENT. The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal and designated representatives, and significant others of the individuals to interact; and

(c) Opportunities for individuals, families, guardians, legal and designated representatives, and significant others to participate on the Board of Directors or on committees or to review policies of the agency that directly affect the individuals receiving services from the agency.

(4) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the agency must have a written policy that states each ISP for an individual is developed to meet the level of independence, productivity, and integration of the individual into the local community.

(5) CONFIDENTIALITY OF RECORDS. The agency must have and implement written policies and procedures that ensure all records for individuals are kept confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.

(c) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(6) BEHAVIOR SUPPORT. The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(7) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

(A) When the health and safety of an individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies; or

(B) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health-related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the protection of an individual during the time that a medical condition exists.

(8) HANDLING AND MANAGING INDIVIDUALS' MONEY. The agency must have and implement written policies and procedures for the handling and management of money for the individuals. Such policies and procedures must provide for:

(a) Financial planning and management of the funds for an individual unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding the funds for an individual;

(c) Individuals receiving and spending their own money; and

(d) Taking into account the interests and preferences of the individual.

(9) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) The agency must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(10) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-323-0070
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by an agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

(2) The agency requesting a variance must submit a written 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) If the variance applies to the services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(4) The agency may request an administrative review of the denial of a variance request. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The decision of the Director is the final response from the Department.

(5) The duration of the variance is determined by the Department.

(6) The agency may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in these rules.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(4) "Agency" means "provider" as defined in this rule.

(5) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(6) "Apartment" means "24-hour residential setting" as defined in this rule.

(7) "Appeal" means the process under ORS chapter 183 that a provider may use to petition a civil penalty.

(8) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing comprehensive services in a 24-hour residential program.

(9) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.

(10) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(11) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(12) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.

(13) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(14) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(15) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(16) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of services in an endorsed 24-hour residential setting.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(18) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(19) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(20) "Competency Based Training Plan" means the written description of the process of the provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the mission of the provider; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a provider to accommodate the specific circumstances of a staff member.

(21) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(22) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(23) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

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

(25) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(26) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(27) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health-related agency policies and procedures, or providing general training for staff.

(28) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(29) "Domestic Animals" means the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(30) "Duplex" means "24-hour residential setting" as defined in this rule.

(31) "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

(32) "Endorsement" means the authorization to provide services in a 24-hour residential setting that is issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(33) "Entry" means admission to a Department-funded developmental disability service.

(34) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of services in a 24-hour residential setting.

(35) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(36) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an individual less than 18 years of age receiving, or targeted to receive, services in a 24-hour residential setting for children is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.

(c) The functional needs assessment for an individual 16 years of age and older receiving, or targeted to receive, services in a 24-hour residential setting for adults is known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.

(d) A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(37) "Guardian" means the parent of an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(38) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(39) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.

(40) "Home" means "24-hour residential setting" as defined in this rule.

(41) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(42) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(43) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual

(44) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(45) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(46) "Involuntary Reduction" means a provider has made the decision to reduce the services provided to an individual without prior approval from the individual.

(47) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(48) "ISP" means "Individual Support Plan". An ISP includes written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering driven by the individual. The ISP reflects services and supports important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(49) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.

(50) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.

(51) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.

(52) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.

(53) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the body of the individual.

(54) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(55) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(56) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(57) "Natural Support" means:

(a) For a child, the parental responsibilities and the voluntary resources available to the child from the relatives, friends, neighbors, and the community of the child that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from the relatives, friends, significant others, neighbors, roommates, and the community of the adult that are not paid for by the Department.

(58) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(59) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(60) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(61) "Oregon Core Competencies" means:

(a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(62) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(63) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(65) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(66) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(67) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(68) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that a provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(69) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(70) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(71) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(72) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(73) "Suspension" means an immediate temporary withdrawal of the approval to operate a 24-hour residential setting after the Department determines a provider or 24-hour residential setting is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(74) "These Rules" mean the rules in OAR chapter 411, division 325.

(75) "Transfer" means movement of an individual from one home to another home administered or operated by the same provider.

(76) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(77) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(78) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0060
Conditions on License

The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of a home. The type of condition attached to a license must directly relate to the risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home is not being operated in compliance with these rules; or

(e) The provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include, but are not limited to:

(a) Restricting the total number of individuals to whom a provider may provide services;

(b) Restricting the total number of individuals within a licensed classification level based upon the capability and capacity of the provider and staff to meet the health and safety needs of all individuals;

(c) Restricting the type of support and services within a licensed classification level based upon the capability and capacity of the provider and staff to meet the health and safety needs of all individuals;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the provider from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(g) Requiring additional documentation; or

(h) Restricting entry.

(3) The Department issues a written notice to the provider when the Department imposes conditions to a license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation which warranted the condition has been remedied.

(4) The provider may request a hearing in accordance with ORS Chapter 183 and this rule upon receipt of written notice of conditions. The request for a hearing must be in writing.

(a) The provider must request a hearing within 21 days from the receipt of the written notice of conditions.

(b) In addition to, or in lieu of a hearing, a provider may request an administrative review as described in section (5) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the provider to a hearing.

(5) ADMINISTRATIVE REVIEW.

(a) In addition to the right to a hearing, a provider may request an administrative review by the Director of the Department for imposition of conditions. The request for an administrative review must be in writing.

(b) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of conditions. The provider may submit, along with the written request for an administrative review, any additional written materials the provider wishes to have considered during the administrative review.

(c) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the provider.

(d) The provider may request a hearing if the decision of the Department is to affirm the condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of conditions.

(6) The provider may send a written request to the Department to remove a condition if the provider believes the situation that warranted the condition has been remedied.

(7) Conditions must be posted with the license in a prominent location and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0110
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the provider that an alternative method or different approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of the individuals or violate state or federal laws.

(2) The provider requesting a variance must submit a written application to the CDDP 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) If the variance applies to the services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the provider, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(5) The provider may request an administrative review of the denial of a variance request. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The provider must send a copy of the written request for an administrative review to the CDDP. The decision of the Director is the final response from the Department.

(6) The duration of the variance is determined by the Department.

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

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0120
Medical Services

(1) The provider must have and implement written policies and procedures that maintain and protect the physical health of individuals. The policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) INDIVIDUAL HEALTH CARE.

(a) An individual must receive care that promotes the health and well-being of the individual as follows:

(A) The provider must ensure the individual has a primary physician or health care provider whom the individual has chosen from among qualified providers;

(B) Provisions must be made for a secondary physician or clinic in the event of an emergency;

(C) The provider must ensure that an individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a physician;

(D) The provider must monitor the health status and physical conditions of the individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm;

(b) A written, signed order from a physician or qualified health care provider is required prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topical;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(c) The provider must implement the order of a physician or qualified health care provider.

(d) The provider must maintain records on each individual to aid physicians, licensed health professionals, and the provider in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;

(B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(C) A record of known hospitalizations and surgeries.

(3) MEDICATION.

(a) All medications must be:

(A) Kept in their original containers;

(B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the written order of a physician or qualified health care provider; and

(C) Kept in a secured locked container and stored as indicated by the product manufacturer.

(b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of a physician or qualified health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For topical medications and treatments without the order of a physician or qualified health care provider, a transcription of the printed instructions from the package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (i.e., as needed) medication was administered;

(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(I) An explanation of any medication administration irregularity; and

(J) Documentation of any known allergy or adverse drug reaction.

(c) Self-administration of medication.

(A) The ISP for individuals who independently self-administer medications must include a plan for the periodic monitoring and review of the self-administration of medications.

(B) The provider must ensure that individuals able to self-administer medications keep the medications in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.

(e) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by a health care provider, from a single pharmacy which maintains a medication profile for the individual;

(B) Maintaining information about the desired effects and side effects of each medication;

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(D) Documentation in the record for an individual of the reason all medications are not provided through a single pharmacy.

(f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of the medication. A written record of the disposal of the medication must be maintained and include documentation of:

(A) Date of disposal;

(B) Description of the medication, including dosage strength and amount being disposed;

(C) Individual for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of the person disposing of the medication; and

(G) For controlled medications, the signature of a witness to the disposal.

(4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(5) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 47.

(6) When the medical, behavioral, or physical needs of an individual change to a point that they may not be met by the provider, the services coordinator must be notified immediately and notification must be documented.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0180
Individual Summary Sheets

The provider must maintain a current one to two page summary sheet for each individual receiving services from the provider. The record must include:

(1) The name of the individual and his or her current and previous address, date of entry into the home, date of birth, gender, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (if applicable), and guardianship status; and

(2) The name, address, and telephone number of:

(a) The legal or designated representative, family, and other significant person of the individual (as applicable), and for a child, the parent and educational surrogate (if applicable);

(b) The primary care provider and clinic preferred by the individual;

(c) The dentist preferred by the individual;

(d) The identified pharmacy preferred by the individual;

(e) The school, day program, or employer of the individual (if applicable);

(f) The services coordinator of the individual and Department representative for Department direct contracts; and

(g) Other agencies and representatives providing services and supports to the individual.

(3) For children under the age 18, any court ordered or legal representative authorized contacts or limitations must also be included on the individual summary sheet.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0185
Emergency Information

(1) A provider must maintain emergency information for each individual receiving services from the home in addition to the individual summary sheet described in OAR 411-325-0180.

(2) The emergency information must be kept current and must include:

(a) The name of the individual;

(b) The name, address, and telephone number of the provider;

(c) The address and telephone number of the home where the individual lives;

(d) The physical description of the individual, which may include a picture and the date the picture was taken, and identification of:

(A) The race, gender, height, weight range, hair, and eye color of the individual; and

(B) Any other identifying characteristics that may assist in identifying the individual if the need arises, such as marks or scars, tattoos, or body piercings.

(e) Information on the abilities and characteristics of the individual including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The health support needs of the individual, including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health-related needs.

(g) The emotional and behavioral support needs of the individual, including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The supervision requirements of the individual and why; and

(j) Any additional pertinent information the provider has that may assist in the care and support of the individual if a natural or man-made disaster occurs.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0230
Emergency Plan and Safety Review

(1) Providers must provide the emergency plan and safety review requirements as described in this rule.

(2) EMERGENCY PLANNING.

(a) Providers must post the following emergency telephone numbers in close proximity to all phones used by staff.

(A) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency services; and

(B) The telephone number of the executive director, emergency physician, and additional people to be contacted in the case of an emergency.

(b) If an individual regularly accesses the community independently, the provider must provide the information to the individual about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(3) Providers must develop, maintain, update, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually. The emergency plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home, such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation supplies, to shelter in place, when unable to relocate, for at least three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transporting, and housing of individuals, including instructions to staff to notify the Department, local office, or designee of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the home;

(iv) A method that provides a person unknown to the individual the ability to identify each individual by name and to identify the name of the supporting provider for the individual; and

(v) A method for tracking and reporting to the Department, local office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals, including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheets described in OAR 411-325-0180 and the emergency information described in OAR 411-325-0185 and other information necessary to obtain care, treatment, food, and fluids for the individuals.

(ii) Continued access to life-sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(b) The provider must instruct and provide training about the duties and responsibilities for implementing the emergency plan to all staff.

(c) The provider must re-evaluate and revise the emergency plan at least annually or when there is a significant change in the home.

(d) The emergency plan summary must be sent to the Department annually and upon change of ownership.

(e) Applicable parts of the emergency plan must coordinate with each applicable employment provider to address the possibility of an emergency or disaster during work hours.

(4) A documented safety review must be conducted quarterly to ensure that each home is free of hazards. The provider must keep the quarterly safety review reports for three years and must make them available upon request by the CDDP or the Department.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0300
Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of the individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(I) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services and a reassessment of service needs;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(Y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(f) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS Chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0360
Psychotropic Medications and Medications for Behavior

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician or health care provider through a written order; and

(b) Monitored by the prescribing physician or health care provider, ISP team, and provider for desired responses and adverse consequences.

(2) When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the Department Balancing Test Form (form SDS 4110) or by inserting the required form content into forms maintained by the provider. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) The provider must keep signed copies of the Balancing Test Forms required in section (2) of this rule in the medical record for the individual for seven years.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0390
Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters a 24-hour residential setting is subject to eligibility as described in this section.

(a) To be eligible for services in a 24-hour residential setting, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or community living support.

(b) To be eligible for Department-funded relief care, an individual must:

(A) Meet the criteria in subsection (a)(A)–(D) of this section;

(B) Be referred by a CDDP or Brokerage; and

(C) Not be receiving services in a supported living setting as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY.

(a) The Department authorizes the entry of children into 24-hour residential settings and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential settings, except in the cases of residential services for children and stabilization and crisis units.

(4) DOCUMENTATION UPON ENTRY.

(a) Prior to or upon an entry ISP team meeting, a provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating the safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age;

(J) Written documentation to explain why preferences or choices of the individual may not be honored at that time; and

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Program (if available).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting;

(c) The date determined to be the date of entry;

(d) Documentation of the participants included in the entry meeting;

(e) Documentation of the pre-entry information required by section (4)(a) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(6) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.

(b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(d) A provider is responsible for the provision of services until an individual exits the home.

(7) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered or the license for the home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (e) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) A provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) A provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve the room of the individual until receipt of the Final Order.

(8) EXIT MEETING.

(a) An ISP team must meet before any decision to exit and individual is made. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(A) The individual requests an immediate move from the home; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.

(9) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative of the individual, parent, or family members, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0430
Individual Support Plan

(1) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Service Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record;

(e) Other documents required by the ISP team; and

(f) The functional needs assessment.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(b) A description of the supports required that is consistent with the support needs identified in an assessment of the individual;

(c) The projected dates of when specific supports are to begin and end;

(d) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(e) The manner in which services are delivered and the frequency of services;

(f) Provider type;

(g) The setting in which the individual resides as chosen by the individual;

(h) The strengths and preferences of the individual;

(i) Individually identified goals and desired outcomes;

(j) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(k) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(l) The identity of the person responsible for case management and monitoring the ISP;

(m) A provision to prevent unnecessary or inappropriate care; and

(n) The alternative settings considered by the individual.

(4) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(5) The provider must maintain documentation of implementation of each support and services specified in sections (2)(c) to (2)(e) of this rule in the ISP for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-325-0460
Civil Penalties

(1) For purposes of imposing civil penalties, 24-hour residential settings licensed under ORS 443.400 to 443.455 and 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential settings as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following rules may result in a civil penalty up to $500 per day for each violation not

to exceed $6,000 for all violations for any licensed 24-hour residential setting within a 90-day period:

(A) 411-325-0025(3), (4), (5), (6), and (7);

(B) 411-325-0120(2), and (4);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3) and (4); and

(P) 411-325-0440.

(b) Civil penalties of up to $300 per day per violation may be imposed for violations of any section of these rules not listed in subsection (a)(A) to (a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential setting where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule may not exceed $6,000 within a 90-day period.

(3) Monitoring occurs when a 24-hour residential setting is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:

(a) The past history of the provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential settings;

(c) The economic and financial conditions of the provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.

(5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the provider incurring the penalty receives a notice in writing from the Director of the Department. The notice referred to in this section of this rule is sent by registered or certified mail and includes:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right of the services provider to request a hearing.

(6) The person representing the provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings are conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) If the provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) If, after a hearing, the provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.

(11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) A violation of any general order or Final Order pertaining to a 24-hour residential setting issued by the Department is subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

(13) Judicial review of civil penalties imposed under ORS 441.710 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0550
Statement of Purpose

(1) The rules in OAR chapter 411, division 328 prescribe standards for providers that support individuals with intellectual or developmental disabilities in a supported living setting.

(2) Supported living provides the opportunity for an individual to live in the residence of his or her choice within the community with recognition that the needs and preferences of the individual may change over time. The levels of support for the individual are based upon individual needs and preferences as identified in a functional needs assessment and defined in an Individual Support Plan. Such services may include up to 24 hours per day of paid supports that are provided in a manner that protects the dignity of the individual.

(3) These rules ensure that providers meet basic management, programmatic, health and safety, and human rights regulations for adults receiving services funded by the Department in supported living settings. The provider is responsible for developing and implementing policies and procedures that ensure that the requirements of these rules are met and ensuring services comply with all applicable local, state, and federal laws and regulations.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0550 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0560
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 328:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.

(3) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(4) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(5) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(6) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.

(7) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(8) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(9) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of services in an endorsed supported living setting.

(10) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(11) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

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

(13) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(14) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(15) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(16) "Endorsement" means the authorization to provide services in a supported living setting that is issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(17) "Entry" means admission to a Department-funded developmental disability service.

(18) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of services in a supported living setting.

(19) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(20) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment (ANA). Effective December 31, 2014, the Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/ANAadultInhome.xls. A printed copy of a blank ANA may be obtained by calling (503) 945-6398 or writing to the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(21) "Guardian" means the person or agency appointed and authorized by a court to make decisions about services for an individual.

(22) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(23) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.

(24) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(25) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(26) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.

(27) "Individual Profile" means the written profile that describes an individual entering into a supported living setting. The profile may consist of materials or assessments generated by a provider or other related agencies, consultants, family members, or the legal or designated representative of the individual (as applicable).

(28) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(29) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(30) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(31) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and support. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(32) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.

(33) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(34) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.

(35) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(36) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(37) "Natural Supports" mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(38) "Needs Meeting" means a process in which an ISP team identifies the services and supports an individual needs to live in his or her own home and makes a determination as to the feasibility of creating such services.

(39) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(40) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques used to maintain health and safety.

(41) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(42) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(43) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(44) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(45) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(46) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(47) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(48) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(49) "Supported Living" means the endorsed setting that provides the opportunity for individuals to live in the residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(50) "These Rules" mean the rules in OAR chapter 411, division 328.

(51) "Transfer" means movement of an individual from one service setting to another service setting administered or operated by the same provider.

(52) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(53) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(54) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0570
Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide services in a supported living setting, the provider must have:

(a) A certificate and an endorsement to provide services in a supported living setting as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic area where services shall be delivered in a supported living setting, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The provider must maintain written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training and training on individual profiles, Transition Plans, and ISPs.

(5) CONFIDENTIALITY OF RECORDS. The provider must ensure the confidentiality of the records for individuals as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. Unless stated otherwise, all entries required by these rules must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0620
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

(2) The provider requesting a variance must submit a written application to the CDDP 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) If the variance applies to the services of an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the provider, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(5) The provider may request an administrative review of the denial of a variance request. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The provider must send a copy of the written request for an administrative review to the CDDP. The decision of the Director is the final response from the Department.

(6) The duration of the variance is determined by the Department.

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

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0620 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0630
Medical Services

(1) The medical records for individuals must be kept confidential as described in OAR 411-323-0060.

(2) The provider must provide sufficient oversight and guidance to ensure that the health and medical needs of the individuals are adequately addressed.

(3) Written health and medical supports must be developed as required for an individual and integrated into a Transition Plan or ISP. The

plan must be based on a functional needs assessment of the health and medically related support needs and preferences of the individual and updated annually or as significant changes occur.

(4) The provider must have and implement written policies and procedures that maintain and protect the physical health of individuals. The policies and procedures must address the following:

(a) Early detection and prevention of infectious disease;

(b) Emergency medical intervention;

(c) Treatment and documentation of illness and health care concerns; and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs, including self-administration of medication.

(5) The provider must ensure an individual has a primary physician or health care provider whom the individual has chosen from among qualified providers.

(6) Provisions must be made for a secondary physician, health care provider, or clinic in the event of an emergency.

(7) The provider must ensure that an individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a health care provider. Evidence of the medical evaluation must be placed in the record for the individual and must address:

(a) Current health status;

(b) Changes in health status;

(c) Recommendations, if any, for further medical intervention;

(d) Any remedial and corrective action required and the date of action;

(e) Restrictions on activities due to medical limitations; and

(f) Prescribed medications, treatments, special diets, and therapies.

(8) The provider must monitor the health status and physical conditions of the individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(9) Before the entry of an individual, the provider must obtain the most complete medical profile available for the individual, including:

(a) The results of most recent physical exam;

(b) Results of any dental evaluation;

(c) A record of immunizations;

(d) A record of known communicable diseases and allergies; and

(e) A summary of the medical history of the individual, including chronic health concerns.

(10) The provider must ensure that all medications, treatments, and therapies:

(a) Have a written order or a copy of a written order signed by a physician or qualified health care provider before any medication, prescription, or non-prescription is administered to, or self-administered by, an individual unless otherwise indicated by an ISP team in the written health and medical support section of the ISP or Transition Plan for the individual; and

(b) Be followed per written orders.

(11) PRN (as needed) orders are not allowed for psychotropic medication.

(12) The drug regimen of an individual on prescription medication must be reviewed and evaluated by a physician or physician designee no less often than every 180 days unless otherwise indicated by an ISP team in the written health and medical support section of the ISP or Transition Plan for the individual.

(13) All prescribed medications and treatments must be self-administered unless contraindicated by an ISP team or physician. For an individual who requires assistance in the administration of his or her own medication, the following must be met:

(a) The ISP team must recommend that the individual receive assistance with taking his or her own medication;

(b) There must be a written training program for the self-administration of medication unless contraindicated by the ISP team; and

(c) There must be a written record of medications and treatments that documents that the orders of a physician are being followed.

(14) The ISP for an individual who independently self-administers medication must include a plan for the periodic monitoring or review of the self-administration of medication.

(15) The provider must assist an individual with the use of a prosthetic device as ordered.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0640
Dietary

(1) The provider is responsible for providing the support and guidance as identified in individuals ISPs to ensure that individuals are provided access to a nutritionally adequate diet.

(2) Written dietary supports must be developed as required by an ISP team and integrated into a Transition Plan or ISP. The plan must be based on a review and identification of the dietary service needs and preferences of an individual and updated annually or as significant changes occur.

(3) The provider must have and implement policies and procedures related to maintaining adequate food supplies and meal planning, preparation, service, and storage.

Stat. Auth.:ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0640 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0650
Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be maintained.

(2) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(3) Each residence must have:

(a) A kitchen area for the preparation of hot meals; and

(b) A bathroom containing a properly operating toilet, handwashing sink, and a bathtub or shower.

(4) Each residence must be adequately heated and ventilated.

Stat. Auth.:ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0650 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0660
General Safety

(1) The provider must employ means for protecting the health and safety of the individuals which:

(a) Are not unduly restrictive;

(b) May include risks but do not inordinately affect the health, safety, and welfare of the individuals; and

(c) Are used by other people in the community.

(2) Written safety supports must be developed as required by an ISP team and integrated into a Transition Plan or ISP. The plan must:

(a) Be based on a review and identification of the safety needs and preferences of an individual;

(b) Be updated annually or as significant changes occur; and

(c) Identify how the individual evacuates his or her residence, specifying at a minimum the routes to be used and the level of assistance needed.

(3) The provider must have and implement policies and procedures that provide for the safety of individuals and for responses to emergencies and disasters.

(4) The need for emergency evacuation procedures and documentation thereof must be assessed and determined by an ISP team.

(5) An operable smoke alarm must be available in each bedroom and in a central location on each floor.

(6) An operable class 2A10BC fire extinguisher must be easily accessible in each residence.

(7) First aid supplies must be available in each residence.

(8) An operable flashlight must be available in each residence.

(9) The provider must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(10) Bedrooms must meet minimum space requirements (single 60 square feet, double 120 square feet with beds located three feet apart).

(11) Sleeping rooms must have at least one window that opens from the inside without special tools and provides a clear opening through which an individual is able to exit.

(12) Emergency telephone numbers must be available at the residence of each individual and include:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Executive Director or the designee of the Executive Director, emergency physician, and other people to be contacted in case of an emergency.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0660 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0680
Staffing Requirements

(1) The provider must provide responsible people or an agency that is on-call and available to individuals by telephone at all times.

(2) The provider must provide staff appropriate to the number and needs of individuals receiving services as specified in their ISPs.

(3) Each provider must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0680 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0690
Individual Summary Sheets

The provider must maintain a current one to two page summary sheet for each individual receiving services from the provider. The record must include:

(1) The name of the individual and his or her current address, home phone number, date of entry, date of birth, gender, marital status, social security number, social security beneficiary account number, religious preference, preferred hospital, and where applicable, the number of the Disability Services Office (DSO) or the Multi-Service Office (MSO) of the Department and guardianship status; and

(2) The name, address, and telephone number of:

(a) The legal or designated representative, family, and other significant person of the individual (as applicable);

(b) The primary care provider and clinic preferred by the individual;

(c) The dentist preferred by the individual;

(d) The identified pharmacy preferred by the individual;

(e) The day program or employer of the individual (if any);

(f) The services coordinator of the individual; and

(g) Other agencies and representatives providing services and supports to the individual.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0690 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0700
Incident Reports and Emergency Notifications

(1) An incident report, as defined in OAR 411-328-0560, must be placed in the record for an individual upon injury, accident, act of physical aggression, or unusual incident. The incident report must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all incident reports must be sent or made electronically available to the services coordinator within five business days of the incident.

(3) Upon request of the legal representative, a copy of the incident report must be sent or made electronically available to the legal representative within five business days of the incident. If a copy of the incident report is sent or made electronically available to the legal representative of an individual, any confidential information about other individuals must be removed or redacted as required by federal and state privacy laws. A copy of an incident report may not be provided to the legal representative of an individual when the report is part of an abuse or neglect investigation.

(4) The provider must notify the CDDP immediately if an incident or allegation falls within the scope of abuse as defined in OAR 407-045-0260. When an abuse investigation has been initiated, the CDDP must ensure that either the services coordinator or the provider also immediately notifies the legal or designated representative of the individual (as applicable). The parent, next of kin, or other significant person of the individual may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(5) In the case of a serious illness, injury, or death of an individual, the provider must immediately notify:

(a) The legal or designated representative, parent, next of kin, and other significant person of the individual (as applicable);

(b) The CDDP; and

(c) Any other agency responsible for the individual.

(6) In the case of an individual who is missing beyond the timeframes established by the ISP team, the provider must immediately notify:

(a) The designated representative of the individual;

(b) The legal representative of the individual, if any, or nearest responsible relative;

(c) The local police department; and

(d) The CDDP.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0700 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0710
Vehicles and Drivers

(1) A provider that owns or operates a vehicle that transports individuals must:

(a) Maintain the vehicle in safe operating condition;

(b) Comply with the laws of the Department of Motor Vehicles;

(c) Maintain insurance coverage on the vehicle and all authorized drivers; and

(d) Carry a first aid kit in the vehicle.

(2) A driver operating a vehicle to transport individuals must meet all applicable requirements of the Department of Motor Vehicles.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0710 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0715
Financial Rights

(1) Written individual financial supports must be developed as required by an ISP team and integrated into a Transition Plan or ISP. The plan must be based on a review and identification of the financial support needs and preferences of an individual and be updated annually or as significant changes occur.

(2) The provider must have and implement written policies and procedures related to the oversight of the financial resources for individuals.

(3) The provider must reimburse an individual for any funds that are missing due to the theft or mismanagement on the part of any staff of the provider, or of any funds within the custody of the provider that are missing. Reimbursement must be made to the individual within 10 business days from the verification that funds are missing.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0715 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0720
Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in subsection (c) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in subsection (c) of this section must be provided to an individual and the legal or designated representative of the individual.

(c) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) Individual choice to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the individual;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, day support activities, school, educational opportunities, and health care resources;

(I) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services and a reassessment of service needs;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(Y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(d) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(e) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(f) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(g) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS Chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0720 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0750
Personalized Plans

(1) The decision to support an individual so that the individual may live in and maintain his or her own home requires significant involvement from the individual and the ISP team for the individual. In supported living, this process is characterized by a functional needs assessment and a series of team meetings or discussions to determine what personalized supports the individual needs to live in his or her own home, a determination as to the feasibility of creating such supports, and the development of a written plan that describes services the individual must receive upon entry into supported living.

(2) NEEDS MEETING. An ISP team must meet to discuss the projected service needs of an individual prior to the individual receiving services in a supported living setting. The needs meeting must:

(a) Review information related to the health and medical, safety, dietary, financial, social, leisure, staff, mental health, and behavioral support needs and preferences of the individual;

(b) Include the individual, any potential providers, and other ISP team members;

(c) As part of a functional needs assessment, identify the supports required for the individual to live in his or her own home; and

(d) Discuss the selection of potential providers based on the service needs of the individual.

(3) TRANSITION PLAN. The individual, provider, and other ISP team members must participate in an entry meeting prior to the initiation of

services. The outcome of the entry meeting must be a written Transition Plan that takes effect upon entry. The Transition Plan must:

(a) Address the health and medical, safety, dietary, financial, staffing, mental health, and behavioral support needs and preferences of the individual as required by the ISP team;

(b) Indicate who is responsible for providing the supports described in the Transition Plan;

(c) Be based on the list of supports identified in the functional needs assessment and consultation required by the ISP team; and

(d) Be developed and approved by the ISP team and available at the service site.

(4) INDIVIDUAL SUPPORT PLAN (ISP).

(a) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.

(b) The ISP or attached documents must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the individual;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Provider type;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) Individually identified goals and desired outcomes;

(J) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(K) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(L) The identity of the person responsible for case management and monitoring the ISP;

(M) A provision to prevent unnecessary or inappropriate care; and

(N) The alternative settings considered by the individual.

(c) As of July 1, 2014, a Career Development Plan must be attached to an ISP in accordance with OAR 411-345-0160.

(5) INDIVIDUAL PROFILE.

(a) The provider must develop a written profile within 90 days of entry. The profile is used to train new staff. The profile must include information related to the history or personal highlights, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe an individual.

(b) The profile must be composed of written information generated by the provider. The profile may include:

(A) Reports of assessments or consultations;

(B) Historical or current materials developed by the CDDP or nursing facility;

(C) Material and pictures from the family and friends of the individual;

(D) Newspaper articles; and

(E) Other relevant information.

(c) The profile must be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0750 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0760
Behavior Support

(1) The provider must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(2) The provider must inform an individual and, as applicable, the legal or designated representative of the individual, of the behavior support policy and procedures at the time of entry and as changes occur.

(3) A decision to develop a plan to alter a behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the provider.

(4) The behavior consultant or a trained staff member must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior, including frequency, duration, and intensity of the behavior (as applicable);

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(5) The Behavior Support Plan must include:

(a) An individualized summary of the needs, preferences, and relationships of the individual;

(b) A summary of the function of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(6) Providers must maintain the following additional documentation for implementation of a Behavior Support Plan:

(a) Written evidence that the individual, the legal representative of the individual (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0760 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0770
Protective Physical Intervention

(1) The provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection ordered by a licensed health care provider if absolutely necessary during the conduct of a specific medical or surgical procedure or for the protection of the individual during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring pro-

tective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training must be maintained in the personnel file for the staff person.

(3) The provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the record for the individual.

(4) Use of protective physical intervention techniques that are not part of an approved Behavior Support Plan in emergency situations must:

(a) Be reviewed by the Executive Director or the designee of the Executive Director within one hour of application;

(b) Be only used until the individual is no longer an immediate threat to self or others;

(c) Result in the submission of an incident report to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if applicable), no later than one business day after the incident has occurred ; and

(d) Prompt an ISP meeting if emergency protective physical intervention is used more than three times in a six month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of protective physical intervention;

(d) Documentation of any injury;

(e) The name and the position of the staff member applying the protective physical intervention;

(f) The name and position of any staff member witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of a review by the Executive Director or the designee of the Executive Director who is knowledgeable in OIS, as evident by a job description that reflects this responsibility. The review must include the follow-up to be taken to prevent a recurrence of the incident.

(6) A copy of the incident report must be sent or made electronically available within five business days of the incident to the services coordinator and the legal representative of the individual (when applicable).

(a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal representative or other provider when the report is part of an abuse or neglect investigation.

(c) Copies sent or made electronically available to a legal representative or other provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(d) All protective physical interventions resulting in injuries must be documented in an incident report and sent or made electronically available to the services coordinator or other Department designee (if applicable) within one business day of the incident.

(7) BEHAVIOR DATA SUMMARY.

(a) The provider may substitute a behavior data summary in lieu of individual incident reports when:

(A) There is no injury to the individual or others;

(B) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(C) The Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(D) The protective physical intervention techniques and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the Behavior Support Plan and OIS curriculum; and

(E) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record the items described in section (5)(a)-(c) and (e)-(h) of this rule.

(b) A copy of the behavior data summary must be forwarded or made electronically available every 30 days to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if applicable).

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0770 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0780
Psychotropic Medications and Medications for Behavior

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician through a written order; and

(b) Included in the ISP.

(2) The use of psychotropic medications and medications for behavior must be based on the decision of a physician that the harmful effects without the medication clearly outweigh the potentially harmful effects of the medication. Providers must present the physician with a full and clear written description of the behavior and symptoms to be addressed, as well as any side effects observed, to enable the physician to make this decision.

(3) Psychotropic medications and medications for behavior must be:

(a) Monitored by the prescribing physician, ISP team, and provider for desired responses and adverse consequences; and

(b) Reviewed to determine the continued need and lowest effective dosage in a carefully monitored program.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0780 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

411-328-0790
Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters supported living is subject to eligibility as described in this section.

(a) To be eligible for supported living, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020;

(E) Be an individual who is not receiving other Department-funded in-home or community living support;

(F) Have access to the financial resources to afford living expenses, such as food, utilities, rent, and other housing expenses; and

(G) Be eligible for Community First Choice state plan services.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY.

(a) Prior to or upon an entry ISP team meeting, a provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restriction on the rights of the individual (if applicable);

(I) Written documentation to explain why preferences or choices of the individual may not be honored at that time;

(J) A copy of the most recent ISP and Behavior Support Plan and assessment (if available);

(K) Information related to the lifestyle, activities, and other choices and preferences; and

(L) Documentation of financial resources.

(b) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the file for the individual and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the entry meeting;

(C) The date determined to be the date of entry;

(D) Documentation of the participants included in the entry meeting;

(E) Documentation of the pre-entry information required by subsection (a) of this section;

(F) Documentation of the decision to serve the individual requesting services; and

(G) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.

(b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(5) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) A provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS Chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve service availability for the individual until receipt of the Final Order.

(6) EXIT MEETING.

(a) An ISP team must meet before any decision to exit an individual is made. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(7) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0790 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Comprehensive In-Home Support for Adults with Intellectual or Developmental Disabilities

Adm. Order No.: APD 43-2014

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Rules Amended: 411-330-0020, 411-330-0030, 411-330-0040, 411-330-0050, 411-330-0060, 411-330-0065, 411-330-0070, 411-330-0080, 411-330-0090, 411-330-0100, 411-330-0110, 411-330-0130, 411-330-0140

Rules Repealed: 411-330-0020(T), 411-330-0030(T), 411-330-0040(T), 411-330-0050(T), 411-330-0060(T), 411-330-0070(T), 411-330-0080(T), 411-330-0090(T), 411-330-0100(T), 411-330-0110(T), 411-330-0130(T)

Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities.

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

Reflect correct program eligibility requirements with respect to the 1915(k) Community First Choice state plan amendment;

Update the conditions under which an individual must exit comprehensive in-home supports;

Update language to assure continued availability of services to an individual who transfers case management entities;

Update language to reflect the completion of the transition period for the implementation of the 1915(k) Community First Choice state plan amendment and to incorporate service parameters associated with the proposed Comprehensive Services 1915(c) Home and Community-Based Services waiver;

Adjust to the adoption of the personal support worker rules in OAR chapter 411, division 375 by excluding specific requirements for personal support workers;

Reflect terminology associated with service descriptions found in the 1915(k) Community First Choice state plan amendment;

Reflect the terminology associated with the proposed Comprehensive Services 1915(c) Home and Community-Based Services waiver and the 1915(k) Community First Choice state plan amendment;

Account for changes in service eligibility related to the types of Medicaid eligibility an individual may have and to update the available supports to reflect changes to the proposed Comprehensive Services 1915(c) Home and Community Based Services waiver;

Provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-330-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 330:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by 407-045-0310.

(3) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(6) "Alternative Resources" mean possible resources for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(7) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are necessary to enable an individual to increase the ability of the individual to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the individual lives.

(8) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are purchased to provide support for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(9) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding, as described in OAR 411-330-0110.

(10) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(11) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-330-0070 who conducts functional assessments and develops a Behavior Support Plan.

(12) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

(13) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(14) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(15) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(16) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(17) "Chore Services" mean the services described in OAR 411-330-0110 that are needed to restore a hazardous or unsanitary situation in the home of an individual to a clean, sanitary, and safe environment.

(18) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(19) "Community Nursing Services" mean the nursing services described in OAR 411-330-0110 that focus on the chronic and ongoing health and safety needs of an individual living in his or her own home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(20) "Community Transportation" means the services described in OAR 411-330-0110 that enable an individual to gain access to community-based state plan and waiver services, activities and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.

(21) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services and attendant care provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated program for employment. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in Brokerages.

(22) "CPMS" means "Client Process Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

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

(24) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(25) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(26) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(27) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(28) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, an individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual or the legal representative of the individual to conduct the employer responsibilities described in OAR 411-330-0065. An employer may also be a designated representative.

(29) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the legal or designated representative or family members of the individual, with directing and supervising provision of services described in the ISP for the individual. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as service agreements; and

(d) Fiscal intermediary services.

(30) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(31) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(32) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(33) "Entry" means admission to a Department-funded developmental disability service.

(34) "Environmental Modifications" mean the physical adaptations described in OAR 411-330-0110 that are necessary to ensure the health, welfare, and safety of an individual in his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(35) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-330-0110 that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(36) "Exit" means termination or discontinuance of in-home support.

(37) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of an individual for in-home support as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(38) "Family Training" means the training services described in OAR 411-330-0110 that are provided to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual.

(39) "Fiscal Intermediary" means a person or entity that receives and distributes IHS funds on behalf of an employer.

(40) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult enrolled in comprehensive in-home supports is known as the Adult Needs Assessment (ANA). Effective December 31, 2014, the Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/ANAadultInhome.xls. Printed copies of a blank ANA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(41) "General Business Provider" means an organization or entity selected by an individual and paid with IHS funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(42) "Home" means the primary residence of an individual that is not under contract with the Department to provide services to the individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(43) "Home Delivered Meals" means "Home Delivered Meals" as defined in OAR 411-040-0010.

(44) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Managing personal finances;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(45) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(46) "IHS" means "in-home support" as defined in this rule.

(47) "Immediate Family" means, for the purpose of determining whether IHS funds may be used to pay a family member to provide services, the spouse of an adult with an intellectual or developmental disability.

(48) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for IHS funds. Effective January 1, 2015, the Department incorporates Version 2.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(49) "In-Home Support" means services that are:

(a) Required for an individual with an intellectual or developmental disability to live in the home or the family home of the individual;

(b) Designed, selected, and managed by the individual; and

(c) Provided in accordance with the ISP for the individual.

(50) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(51) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(52) "Independent Provider" means a person selected by an individual and paid with IHS funds to directly provide services to the individual.

(53) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(54) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources that are used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(55) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(56) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(57) "Job Coaching" means "Job Coaching" as defined in OAR 411-345-0020.

(58) "Job Development" means "Job Development" as defined in OAR 411-345-0020.

(59) "Legal Representative" means an attorney at law who has been retained by or for an individual, a person acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.

(60) "Natural Supports" means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(61) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(62) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(63) "Oregon Intervention System (OIS)" means the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(64) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(65) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(66) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(67) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(68) "Primary Caregiver" means the person identified in an ISP as providing the majority of service and support for an individual in the home of the individual.

(69) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(70) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(71) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(72) "Provider Organization" means an entity, licensed or certified by the Department, selected by an individual, and paid with IHS funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(73) "Relief Care" means the intermittent services described in OAR 411-330-0110 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(74) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in the ISP and relating to the ADL, IADL, and health-related tasks of the individual as discussed by the individual, homeowner, service coordinator, and ISP team.

(75) "Self-Direction" means that an individual has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(76) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes, at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(b) For employed personal support workers, the service agreement serves as the written job description.

(77) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(78) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(79) "Skills Training" means the activities described in OAR 411-330-0110 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

(80) "Social Benefit" means the service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(81) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-330-0110, such as:

(a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(82) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(83) "Support" means the assistance that an individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(84) "Supported Employment - Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

(85) "Supported Employment - Small Group Employment" means "supported employment - small group employment" as defined in OAR 411-345-0020.

(86) "These Rules" mean the rules in OAR chapter 411, division 330.

(87) "Transition Costs" mean the expenses described in OAR 411-330-0110, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or ICF/ID to a community-based home setting where the individual resides.

(88) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(89) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-330-0170.

(90) "Vehicle Modifications" means the adaptations or alterations described in OAR 411-330-0110 that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0030
Eligibility for In-Home Support Services

(1) An eligible individual may not be denied in-home support or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) An individual who enters in-home support is subject to eligibility as described in this section. To be eligible for in-home support, an individual must:

(a) Be an Oregon resident;

(b) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(c) Be an adult who is living in his or her own home or the family home who is not receiving other Department-funded in-home or community living support;

(d) Choose to use a CDDP for assistance with design and management of in-home support;

(e) Be eligible for Community First Choice state plan services;

(f) Be determined to meet the level of care defined in OAR 411-320-0020; and

(g) For individuals with excess income, contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

(3) Individuals are not eligible for services by more than one CDDP unless the concurrent eligibility:

(a) Is necessary to effect transition from one county to another with a change of residence; and

(b) Is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0040
In-Home Support Service Entry and Exit

(1) The CDDP must make accurate, up-to-date, written information about in-home support available to eligible individuals and the legal or designated representatives of the individuals. These materials must include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using in-home support, including person-centered planning, evaluation, and how to raise and resolve concerns about in-home support;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of the responsibility of an individual and the legal or designated representative of the individual for use of public funds; and

(e) An explanation of the right of an individual to select and direct providers of services authorized through the ISP and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, and 411-330-0090, as applicable.

(2) The CDDP must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individuals.

(3) An individual may enter in-home support when funds are authorized by the CDDP specifically to support the individual.

(4) An eligible individual who has entered in-home support may continue to receive in-home support as long as the Department continues to provide funds specifically for that individual through a contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(5) An individual must exit in-home support:

(a) At the end of a service period agreed upon by all parties and specified in the ISP;

(b) At the oral or written request of the individual to end the service relationship;

(c) No fewer than 30 days after the CDDP has served the individual, and as applicable the legal or designated representative of the individual, written notice of intent to exit the individual from in-home support when

the individual has been determined to no longer meet eligibility for in-home support as described in OAR 411-330-0030, except when the individual appeals the notice and requests continuing services in accordance with ORS Chapter 183;

(d) When the individual moves from the service area of a CDDP, unless services are part of a time-limited plan for transition to a new county of residence;

(e) Upon entry into support services case management services;

(f) Upon entry into another comprehensive service;

(g) When funds to support the individual are no longer authorized by the CDDP of the county of origin;

(h) When the CDDP has sufficient evidence to believe that an individual has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(i) After the individual either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete ISP development or monitoring activities, including participation in a functional needs assessment.

(6) Any individual being exited from in-home support must be given written notice of the intent to terminate service consistent with OAR chapter 411, division 318.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0050
Required In-Home Support Services

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) A CDDP must complete a functional needs assessment and use a person-centered planning approach to assist an individual, and as applicable the legal or designated representative of the individual, to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address the basic health and safety needs and supports, including informed decisions by the individual regarding any identified risks.

(3) A services coordinator must authorize an initial ISP that addresses the needs of the individual. The needs identified in the functional needs assessment must be addressed in the ISP for the individual. Prior to services beginning, the ISP must be signed by the individual or the legal or designated representative of the individual (as applicable). The ISP and attached documents must include the information described in OAR 411-320-0120, including:

(a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(b) The purpose of ISP activities, addressing one or more of the following:

(A) Independence, such as the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration, such as the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity, such as the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of the family to continue to provide services for the individual in the family home.

(c) A description of the supports required that is consistent with the support needs identified in the assessment of the individual;

(d) The projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(e) Projected costs with sufficient detail to support estimates;

(f) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(g) The manner in which services are delivered and the frequency of services;

(h) Providers;

(i) The setting in which the individual resides as chosen by the individual;

(j) The strengths and preferences of the individual;

(k) Individually identified goals and desired outcomes;

(l) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(m) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(n) The identity of the person responsible for case management and monitoring the ISP;

(o) A provision to prevent unnecessary or inappropriate care;

(p) The alternative settings considered by the individual;

(q) Schedule of ISP reviews; and

(r) Any changes in support needs identified through a functional needs assessment.

(4) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(5) A Nursing Service Plan must be present when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(6) A services coordinator must facilitate and document reviews of the ISP and resources with the individual, and as applicable the legal or designated representative of the individual, at least annually and as major activities or purchases are completed:

(a) Evaluate the progress of an individual toward achieving the purposes of the ISP;

(b) Note effectiveness of the use of IHS funds based on observation as well as the satisfaction of the individual; and

(c) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(7) For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer IHS funds designated for the individual to continue the ISP for supports.

(8) For an individual transferring from a Brokerage to in-home support, the Brokerage ISP may be used as authorization for available in-home support for up to 90 days.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0060
Assistance with Purchasing In-Home Supports

(1) A CDDP must only use IHS funds to assist an individual to purchase supports when:

(a) The services coordinator has developed a written and approved ISP that meets requirements for development and content as described in OAR 411-330-0050;

(b) For Community First Choice state plan services, the support addresses a need that has been determined to be necessary by a functional needs assessment;

(c) The ISP specifies cost-effective arrangements for obtaining the required supports and applying public, private, formal, and informal resources available to the eligible individual;

(d) The ISP identifies the resources needed to purchase the remainder of necessary supports;

(e) The ISP is the most cost-effective plan to safely meet the goals of the individual's ISP; and

(f) The support is consistent with the In-home Expenditure Guidelines.

(2) Goods and services purchased with IHS funds must be provided only as a social benefit as defined in OAR 411-330-0020.

(3) The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the legal or designated representative of the individual (as applicable). The CDDP is specifically prohibited from:

(a) Reimbursing an individual, or as applicable the legal or designated representative or family of the individual, for expenses related to services; and

(b) Advancing funds to an individual, or as applicable the legal or designated representative or family of the individual, to obtain services.

(4) Supports purchased for an individual with IHS funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that enable the individual the choice to receive supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020;

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental modifications to the home; and

(e) According to the Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) SERVICE LIMITS. The use of IHS funds to purchase individual supports in any plan year is limited to:

(a) The service level of an individual as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State plan personal care service hours as described in OAR chapter 411, division 34.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(6) When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the legal or designated representative (as applicable) of the individual, family (if services are provided to an individual in the family home), and the CDDP of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well-being, or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the legal or designated representative of the individual (as applicable), the family of the individual, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the ISP for the individual.

(7) USE OF IHS FUNDS PROHIBITED.

(a) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (7)(a) of this rule does not apply to employees of the individual, the legal or designated representative of the individual (as applicable), or provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) IHS funds must not pay for:

(A) Services, materials, or activities that are illegal;

(B) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(C) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(D) Individual or family vehicles;

(E) Health and medical costs that the general public normally must pay, including but not limited to:

(i) Medications;

(ii) Health insurance co-payments;

(iii) Mental health evaluation and treatment;

(iv) Dental treatments and appliances;

(v) Medical treatments;

(vi) Dietary supplements; or

(vii) Treatment supplies not related to nutrition, incontinence, or infection control;

(F) Basic or specialized food or nutrition essential to sustain the individual including, but not limited to, high caloric supplements, gluten-free supplements, diabetic, ketogenic, or other metabolic supplements;

(G) Ambulance services;

(H) Legal fees including, but not limited to, costs of representation in educational negotiations, establishing trusts, or creating guardianships;

(I) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the individual for personal assistance in all home and community-based settings;

(J) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(K) Rate enhancements to existing employment services under OAR chapter 411, division 345;

(L) Employee wages or contractor payments for services when the individual is not present or available to receive services, such as employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(M) Services, activities, materials, or equipment that are not necessary or cost-effective and do not meet the definition of in-home supports, supports, and social benefits as defined in OAR 411-330-0020;

(N) Educational services for school-age adults, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(O) Services, activities, materials, or equipment that may be obtained by the individual through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(P) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(Q) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the legal or designated representative of the individual (as applicable), family, or provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support;

(R) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need; or

(S) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child or consumer safety agencies.

(8) The CDDP must inform an individual, and as applicable the legal or designated representative of an individual, in writing of records and procedures required in OAR 411-330-0140 regarding expenditure of IHS funds for direct assistance. During development of the ISP, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the ISP and any other written service agreements.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0065
Standards for Employers

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by an individual to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP. The service agreement serves as a written job description for the employed personal support worker.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) INTERVENTION. For the purpose of this rule, "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

(a) For an individual to be eligible for in-home support provided by a personal support worker, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

(E) Recognize, discuss, and attempt to correct, with the personal support worker, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory personal support worker.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department or CDDP as defined in section (4) of this rule;

(C) Frequent errors on timesheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or CDDP;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department or CDDP of services not being delivered as identified in an ISP.

(c) The Department or the CDDP may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) An individual may not receive in-home support provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section.

(A) An individual determined ineligible to be an employer of a personal support worker and unable to designate an employer representative, may not request in-home support provided by a personal support worker until the next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the ability of the individual to meet the employer responsibilities described in subsection (a) of this section. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of a personal support worker is offered other available service options that meet the service needs of the individual, including in-home support through a contracted qualified provider organization or general business provider when available. As an alternative to in-home support, the Department or the designee of the Department may offer other available services through the Home and Community Based Services Waiver or State Plan.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) An individual not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the individual to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the individual.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the individual is not able to meet in order for the individual to receive or continue to receive in-home support provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the employer representative of the individual.

(c) When the employer representative of an individual is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, an individual must:

(A) Designate a different employer representative in order for the individual to receive or continue to receive in-home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the individual.

(7) EMPLOYER REPRESENTATIVE.

(a) An individual, or the legal representative of an individual, may designate an employer representative to act on behalf of the individual, to meet the employer responsibilities described in section (5)(a) of this rule. The legal or designated representative of an individual may be the employer.

(b) An employer who is also the personal support worker of in-home support must seek an alternate employer for purposes of employment of the personal support worker. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

(B) Document the specific employer responsibilities performed by the employer on a Department approved form.

(c) The Department or the CDDP may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b).

(d) If the Department or CDDP suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, an individual may select another employer representative.

(8) NOTICE.

(a) The Department or the CDDP, respectively, shall mail a notice identifying the individual, and if applicable the employer representative and legal or designated representative of the individual, when:

(A) The Department or the CDDP denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department or the CDDP denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

(b) CDDP ISSUED NOTICES. An individual receiving in-home support, or as applicable the legal or designated representative or employer representative of the individual, may appeal a notice issued by the CDDP by requesting a review by the Director of the CDDP.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for review must be received by the CDDP within 45 days from the date of the notice.

(B) The CDDP Director shall complete a review and issue a decision within 30 days of the date the written appeal was received by the CDDP.

(C) If an individual, or as applicable the legal or designated representative or employer representative of the individual, is dissatisfied with the decision of the CDDP Director, the individual, or as applicable the legal or designated representative or employer representative of the individual, may request an administrator review by the Director of the Department.

(D) For an appeal of the decision of the CDDP to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 15 days from the date of the decision of the CDDP.

(E) The Director shall complete an administrator review within 30 days from the date the written appeal was received by the Department.

(F) The determination of the Director is the final response from the Department.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving in-home support, or as applicable the legal or designated representative of the individual, may appeal a notice issued by the Department by requesting an administrator review by the Director of the Department.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 45 days from the date of the notice.

(B) The Director shall complete an administrator review and issue a decision within 30 days of the date the written appeal was received by the Department.

(C) The determination of the Director is the final response from the Department.

(d) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating an individual from in-home support, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0070
Standards for Independent Providers Paid with In-Home Support Funds

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDER WHO ARE NOT PERSONAL SUPPORT WORKERS. An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person must:

(a) Be at least 18 years of age;

(b) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(B) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home support, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be legally eligible to work in the United States;

(e) Not be the spouse of an individual receiving services;

(f) Not be the employer of record or designated representative of the individual;

(g) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP, with such demonstration confirmed in writing by the employer including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual;

(h) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(i) Understand requirements of maintaining confidentiality and safeguarding individual information;

(j) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (http://exclusions.oig.hhs.gov/);

(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services; and

(l) If transporting an individual, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(3) Section (2)(c) of this rule does not apply to employees of an employer or employees of provider organizations who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(5) Independent providers, including personal support workers, are not employees of the state, CDDP, or Brokerage.

(6) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-330-0110;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-330-0110.

(7) NURSE. A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license;

(b) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(c) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0080
Standards for Provider Organizations Paid with In-Home Support Funds

(1) A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for a 24-hour residential setting, or licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 340 for support services, or certified and endorsed under OAR chapter 411, division 345 for employment services or OAR chapter 411, division 328 for a supported living setting, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(2) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to an ISP; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A person directed by a provider organization to provide services paid for with IHS funds as an employee, contractor, or volunteer, must meet the qualifications of an independent provider outlined in OAR 411-330-0070.

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

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0090
Standards for General Business Providers

(1) General business providers providing services to individuals and paid with IHS funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation including, but not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board);

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon; and

(g) For vendors and medical supply companies providing assistive devices or specialized medical supplies, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment.

(2) Services provided and paid for with IHS funds must be limited to the services within the scope of the license of the general business provider.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0100
Provider Termination

(1) The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(2) An independent provider who is not a personal support worker may have their provider enrollment terminated.

(a) Provider enrollment may be terminated when the CDDP or Department determines that, at some point after the initial qualification and authorization of the provider to provide supports purchased with IHS funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the services authorized;

(E) Had a founded report of child abuse or substantiated adult abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made a false statement concerning conviction of a crime or substantiated abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 411-330-0060(6) and 411-330-0070;

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(L) Violated the requirement to maintain a drug-free work place;

(M) Failed to provide services as required;

(N) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(O) Been excluded or debarred by the Office of the Inspector General.

(b) If the CDDP makes a decision to terminate provider enrollment, the CDDP must issue a written notice.

(A) The written notice must include:

(i) An explanation of the reason for termination of the provider enrollment;

(ii) The alleged violation as listed in section (a) of this rule; and

(iii) The appeal rights of the independent provider, including where to file the appeal.

(B) For terminations based on substantiated abuse allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(c) The provider may appeal a termination within 30 days from the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days from the date the termination notice was mailed to the provider.

(d) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0110
Supports Purchased with In-Home Support Funds

(1) For an initial or annual ISP, IHS funds may be used to purchase a combination of the following waiver and state plan services when the conditions of purchase in OAR 411-330-0060 are met:

(a) An individual who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services when supported by an assessed need.

(b) Transfer of Assets.

(A) As of October 1, 2014, an individual receiving medical benefits under chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(c) Community First Choice state plan services include:

(A) Behavior support services as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental modifications as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Skills training as described in section (6) of this rule;

(F) Relief care as described in section (7) of this rule;

(G) Assistive devices as described in section (8) of this rule;

(H) Assistive technology as described in section (9) of this rule;

(I) Chore services as described in section (10) of this rule;

(J) Community transportation as described in section (11) of this rule;

(K) Transition costs as described in section (12) of this rule; and

(L) Home delivered meals as described in OAR chapter 411, division 40.

(d) Individuals who are eligible for OSIPM and meet the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management as defined in OAR 411-320-0020;

(B) Employment services as described in section (13) of this rule that include:

(i) Supported employment — individual employment support;

(ii) Supported employment — small group employment support;

(iii) Employment path services; and

(iv) Discovery and career exploration services;

(C) Family training as described in section (14) of this rule;

(D) Environmental safety modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule; and

(F) Specialized medical supplies as described in section (17) of this rule.

(e) State Plan personal care as described in OAR chapter 411, division 34.

(2) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the family of the individual and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan, by a qualified behavior consultant as described in OAR 411-330-0070, if needed;

(C) Implementing the Behavior Support Plan with the provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of an individual;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by an individual, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of an individual at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Skills training; or

(H) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(4) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(P) Adaptations to control lights, heat, stove, etc.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the needs assessment and ISP for an individual.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work as defined in OAR 411-330-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the primary residence of the individual.

(m) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(5) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene — providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting

clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition — assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Delegated nursing tasks;

(F) First aid and handling emergencies — addressing medical incidents related to the conditions of an individual, such as seizure, aspiration, constipation, or dehydration, responding to the call of the individual for help during an emergent situation, or for unscheduled needs requiring immediate response;

(G) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and

(H) Observation of the status of an individual and reporting of significant changes to a physician, health care provider, or other appropriate person.

(b) IADL services include, but are not limited to:

(A) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment — cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Meal preparation and special diets;

(D) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability — helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions;

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Support in the community around socialization and participation in the community:

(i) Support with socialization — assisting an individual in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation — assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(iii) Support with communication — assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the individual for that particular goal.

(7) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The home of the individual;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the individual or the representative of the individual, that is a safe setting for the individual; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(8) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device with IHS funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to perceive, control, or communicate within the home and community environment in which the individual lives.

(b) Assistive devices may be purchased with IHS funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices; and

(B) Assistive devices, not provided by any other funding source, to assist and enhance the independence of an individual in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment. and supplies furnished under OHP, the state plan, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the individual or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for an individual;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(9) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(11) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP of the individual:

(A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or

(B) The individual has either an assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost effective manner which meets the needs identified in the ISP for the individual.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicle for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation services exclude:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the individual;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the individual;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members who are not personal support workers and are not simultaneously providing other paid supports at the time of the transportation;

(I) Payment to the spouse of an individual receiving in-home support;

(J) Reimbursement for out-of-state travel expenses; and

(K) Mileage reimbursement for the vehicle of the supported individual.

(12) TRANSITION COSTS.

(a) Transition costs are limited to an individual transitioning to the home or community-based setting where the individual resides from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on an the assessed need of an individual determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(13) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are provided to the family of an individual to increase the abilities of the family to care for, support, and maintain the individual in the home of the individual.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of an individual; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of the individual, and increase the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for individual family members who are employed to care for the individual.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with IHS funds.

(15) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department .

(c) Environmental safety modifications exclude:

(A) Large gates, such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the home that are of general utility and are not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work as defined in OAR 411-330-0020 must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental safety modifications must only be completed to the primary residence of the individual.

(n) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(o) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(16) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to the individual or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0130
Complaints, Notification of Planned Action, and Hearings

(1) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The policy and procedures for complaints must be explained and provided as described in OAR 411-320-0175.

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS Chapter 183 and OAR 411-318-0025.

(c) A notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided as described in 411-320-0175.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

411-330-0140
In-Home Support Service Operation

(1) PERSONNEL POLICIES AND PRACTICES. The CDDP must maintain up-to-date written position descriptions for all services coordinators coordinating in-home support that includes written documentation of the following for each staff person:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(c) Satisfactory completion of job-related in-service training;

(d) Department approval to work based on a background check;

(e) Notification and acknowledgement of mandatory abuse reporter status;

(f) Any founded reports of child abuse or substantiated adult abuse;

(g) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(h) Legal U.S. worker status.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive training needed to provide or arrange for the in-home support.

(3) RECORD REQUIREMENTS. The CDDP must maintain records in compliance with this rule, OAR 411-320-0070, applicable state and federal law, and other state rules regarding audits and clinical records and confidentiality.

(a) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1) and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.

(B) For the purposes of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual

records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) INDIVIDUAL RECORDS. The CDDP must maintain, and make available on request for Department review, up-to-date records for each individual receiving in-home support. These records must include:

(A) An easily-accessed summary of basic information including individual name, family name (if applicable), name of the legal or designated representative of the individual(as applicable), or conservator of the individual (if applicable), address, telephone number, date of entry into services, date of birth, gender, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070, and documentation that the individual, and as applicable the legal or designated representative of the individual, understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) ISP and reviews;

(F) Services coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) SPECIAL REQUIREMENTS FOR IHS DIRECT ASSISTANCE EXPENDITURES. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services to meet the supports needs of an individual that are described in the ISP. These policies and procedures must include, but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records must be maintained by the individual, or as applicable the legal or designated representative or family of the individual:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and business providers;

(iv) Pay records to record employee services, including timesheets signed by both employee and employer; and

(v) Documentation that services provided were consistent with the authorized ISP for an individual.

(B) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to an ISP or according to an agreement securing the use of the state may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, or Centers for Medicare and Medicaid Services, or as applicable their authorized representatives, immediately or within timeframes specified in the written request, may be deemed reason to recover payments or deny further assistance.

(d) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records accurately and consistent with generally accepted accounting principles that reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(e) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for at least three years after the close of the contract period, or until audited.

(B) Individual records must be kept for at least seven years.

(4) OTHER OPERATING POLICIES AND PRACTICES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish the objectives of the CDDP and to meet the requirements of these rules and other applicable standards and rules.

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

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Support Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: APD 44-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Adopted: 411-340-0135
Rules Amended: 411-340-0020, 411-340-0050, 411-340-0060, 411-340-0080, 411-340-0090, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0125, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170, 411-340-0180
Rules Repealed: 411-340-0020(T), 411-340-0060(T), 411-340-0100(T), 411-340-0110(T), 411-340-0120(T), 411-340-0130(T), 411-340-0135(T), 411-340-0150(T), 411-340-0160(T), 411-340-0170(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities.

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

Provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

Clarify that eligibility for support services is determined by the Community Developmental Disability Program (CDDP) of the county of origin according to OAR 411-320-0110;

Refer to the individual's rights adopted in OAR 411-318-0010 that implement Senate Bill 22;

Incorporate the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

Clarify the conditions under which an individual must be exited from support services;

Come into compliance with monitoring requirements established in the Community First Choice 1915(k) state plan;

Add requirements for individual participation in assessment processes;

Provide clarity around transfers from one case management entity to another;

Incorporate the requirement for individuals to have a Career Development Plan;

Account for changes in service eligibility related to the types of Medicaid eligibility an individual may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;

Specify the use of support services funds to purchase individual supports based on assessments and approved waiver language;

Update the available supports to reflect changes to the proposed Support Services 1915(c) Home and Community-Based Services waiver;

Specify the circumstances that lead to the inactivation of the provider enrollment for personal support workers and independent providers;

Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect an individual or an employee from misuse;

Reflect the completed transition period for the implementation of the Community First Choice 1915(k) state plan and make terminol-

ogy consistent with the proposed Support Services 1915 (c) Home and Community-Based Services waiver;

Incorporate the provider qualification requirements for personal support workers adopted in OAR chapter 411, division 375;

Update provider types to reflect changes in the Support Services 1915(c) Home and Community-Based Services waiver and the Long-Term Care Community Nursing Program;

Reflect terminology associated with service descriptions found in the Community First Choice 1915(k) state plan;

Clarify that the authority to sanction a certified provider organization lies with the Department;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-340-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 340:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by 407-045-0310.

(3) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Administrative Review" means "administrator review" as defined in this rule.

(5) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(6) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(7) "Alternative Resources" mean possible resources, not including support services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(8) "Annual Plan" means the written summary a personal agent completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(9) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-340-0130 that are necessary to enable an individual to increase the ability of the individual to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the individual lives.

(10) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-340-0130 that are purchased to provide support for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(11) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-340-0130.

(12) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(13) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-340-0160 who conducts functional assessments and develops a Behavior Support Plan.

(14) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

(15) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(16) "Brokerage" means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(17) "Brokerage Director" means the Director of a publicly or privately-operated brokerage, who is responsible for administration and provision of services according to these rules, or the designee of the Brokerage Director.

(18) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(19) "Case Management Contact" means a reciprocal interaction between a personal agent and an individual or the legal or designated representative of the individual (as applicable).

(20) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(21) "Certificate" means the document issued by the Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for the provision of services.

(22) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(23) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-340-0150(5) about:

(a) Case management;

(b) Service options;

(c) Service setting options; and

(d) Provider types.

(24) "Chore Services" mean the services described in OAR 411-340-0130 that are needed to restore a hazardous or unsanitary situation in the home of an individual to a clean, sanitary, and safe environment.

(25) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(26) "Community Nursing Services" mean the nursing services described in OAR 411-340-0130 that focus on the chronic and ongoing health and safety needs of an individual living in his or her own home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(27) "Community Transportation" means the services described in OAR 411-340-0130 that enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.

(28) "Completed Application" means completed application as defined in OAR 411-320-0020.

(29) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services and attendant care provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated program for employment. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in Brokerages.

(30) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of an individual. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(31) "CPMS" means "Client Process Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(32) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(33) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while the individual is in emergent status. Crisis diversion services include short-term residential placement services indicated on a Support Services Brokerage Crisis Addendum.

(34) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 47.

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

(36) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(37) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(38) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(39) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(40) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160.

(41) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, an individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual or the legal representative of the individual to conduct the employer responsibilities described in OAR 411-340-0135. An employer may also be a designated representative.

(42) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the legal or designated representative or family members of an individual, with directing and supervising provision of services described in the ISP for the individual. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as service agreements; and

(d) Fiscal intermediary services.

(43) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(44) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(45) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(46) "Entry" means admission to a Department-funded developmental disability service.

(47) "Environmental Modifications" mean the physical adaptations described in OAR 411-340-0130 that are necessary to ensure the health, welfare, and safety of an individual in his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(48) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-340-0130 that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(49) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(50) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of an individual for brokerage services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(51) "Family Training" means the training services described in OAR 411-340-0130 that are provided to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual.

(52) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an employer.

(53) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult enrolled in a support services brokerage is known as the Adult Needs Assessment (ANA). Effective December 31, 2014, the Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/ANAadultInhome.xls. Printed copies of a blank ANA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(54) "General Business Provider" means an organization or entity selected by an individual and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(55) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(56) "Home" means the primary residence for an individual that is not under contract with the Department to provide services as a certified or licensed foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(57) "Home Delivered Meals" means "Home Delivered Meals" as defined in OAR 411-040-0010.

(58) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Managing personal finances;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(59) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(60) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for support services funds. Effective January 1, 2015, the Department incorporates Version 2.0

of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: (http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf). A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(61) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(62) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(63) "Independent Provider" means a person selected by an individual and paid with support services funds to directly provide services to the individual.

(64) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(65) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(66) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(67) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and the health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(68) "Job Coaching" means "job coaching" as defined in OAR 411-345-0020.

(69) "Job Development" means "job development" as defined in OAR 411-345-0020.

(70) "Legal Representative" means an attorney at law who has been retained by or for an individual, a person acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.

(71) "Level of Care" means an individual meets the following institutional level of care for an ICF/ID:

(a) The individual has a an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria in OAR 411-320-0080 for developmental disability services; and

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(72) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(73) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(74) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(75) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(76) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(77) "Personal Agent" means a person who is a case manager for the provision of case management services, works directly with individuals and the legal or designated representatives and families of individuals, if applicable, to provide or arrange for support services as described in these rules, meets the qualifications set forth in OAR 411-340-0150(5), and is a trained employee of a brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited. A personal agent is the person-centered plan coordinator of an individual as defined in the Community First Choice state plan amendment.

(78) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(79) "Plan Year" means 12 consecutive months that, unless otherwise set according to the conditions of OAR 411-340-0120, begins on the start date specified in the first authorized ISP for an individual after entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP.

(80) "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide individual-based leadership and advice to each brokerage regarding issues, such as development of policy, evaluation of services, and use of resources.

(81) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(82) "Primary Caregiver" means the person identified in an ISP as providing the majority of service and support for an individual in the home of the individual.

(83) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(84) "Progress Note" means a written record of an action taken by a personal agent in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of support services.

(85) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(86) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(87) "Provider Organization" means an entity, licensed or certified by the Department, selected by an individual, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(88) "Provider Organization Director" means the Director of a provider organization who is responsible for the administration and provision of services according to these rules, or the designee of the Director of the provider organization.

(89) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(90) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(91) "Regional Crisis Diversion Program" means "Regional Crisis Diversion Program" as defined in OAR 411-320-0020.

(92) "Relief Care" means the intermittent services described in OAR 411-340-0130 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(93) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment, referenced in the ISP, and relating to the ADL, IADL, and health-related tasks of the individual as discussed by the individual, homeowner, personal agent, and ISP team.

(94) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(95) "Self-Direction" means that an individual has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(96) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes, at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(b) For employed personal support workers, the service agreement serves as the written job description.

(97) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(98) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(99) "Skills Training" means the activities described in OAR 411-340-0130 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

(100) "Social Benefit" means the service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a personal agent and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(101) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-340-0130 that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(102) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-340-0130, such as:

(a) Necessary medical supplies, specified in an ISP that are not available through state plan or alternative resources;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(103) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(104) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120 as well as the uniquely determined activities and purchases arranged through the brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in her or her own home or the family home;

(b) Are designed, selected, and managed by an individual;

(c) Are provided in accordance with the ISP for an individual; and

(d) May include purchase of supports as a social benefit required for an individual to live in his or her own home or the family home.

(105) "Support Services Brokerage Crisis Addendum" means the short-term plan that is required by the Department to be added to an ISP to describe crisis diversion services an individual is to receive while the individual is in emergent status.

(106) "Support Services Funds" mean the public funds designated by the brokerage for assistance with the purchase of supports according to an ISP.

(107) "Supported Employment — Individual Employment Support" means "supported employment — individual employment support" as defined in OAR 411-345-0020.

(108) "Supported Employment — Small Group Employment Support" means "supported employment — small group employment support" as defined in OAR 411-345-0020.

(109) "These Rules" mean the rules in OAR chapter 411, division 340.

(110) "Transition Costs" mean the expenses described in OAR 411-340-0130, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or ICF/ID to a community-based home setting where the individual resides.

(111) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(112) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-340-0090.

(113) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-340-0130 that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 3-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13; SPD 30-2013(Temp), f. & cert. ef. 7-2-13 thru 9-28-13; SPD 31-2013, f. 7-22-13, cert. ef. 8-1-13; SPD 32-2013(Temp), f. 7-22-13, cert. ef. 8-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0050
Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Support services brokerages and provider organizations certified under these rules must allow the following types of investigations and inspections:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, CDDP, Oregon Health Authority, or proper authority performs all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, CDDP, or proper authority; and

(b) Submitted to the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or CDDP has determined to initiate an investigation, the brokerage or provider organization may not conduct an internal investigation without prior authorization from the Department. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(6) The Department or the CDDP shall conduct abuse investigations as set forth in OAR 407-045-0250 to OAR 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, CDDP, or a law enforcement agency, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, in accordance with OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate brokerage or provider organization.

(9) The Department may review the brokerage implementation of these rules at least every two years or more frequently as needed to ensure compliance.

(10) Following a Department review, the Department shall issue a report to the brokerage identifying areas of compliance and areas in need of improvement.

(11) If, following a review, the brokerage is not in substantial compliance with these rules; the brokerage must respond to a plan of improvement within 45 days of the review report being issued, or in a time specified by the Department. The Department may conduct additional reviews as necessary to ensure improvement measures have been achieved. The Department may offer, or the brokerage may request, technical assistance or training.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0060
Complaints, Notification of Planned Action, and Hearings

(1) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The brokerages must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS Chapter 183 and OAR 411-318-0025.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; (Temp) Repealed by SPD 10, 2011, f. & cert. ef. 5-5-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0080
Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505 and any Department rules or policies pertaining to individual service records.

(2) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, brokerages, and provider organizations requiring certification under OAR 411-340-0170(2), are considered "providers" as defined in ORS 179.505(1) and 179.505 is applicable.

(a) Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.

(b) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities;

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise, as needed, a fee schedule identifying the cost of each service provided. Billings for Medicaid funds may not exceed the customary charges to private individuals for any like item or services charged by the brokerage or provider organization; and

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department rule pertaining to fraud and embezzlement.

(4) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(a) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for at least three years after the close of the contract period.

(b) Individual records must be kept for at least seven years.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0090
Support Services Brokerage and Provider Organization Request for Variance

(1) A variance that does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws may be granted to a brokerage or provider organization:

(a) If the brokerage or provider organization lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts, or procedures shall result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances may not be granted to OAR 411-340-0130 and 411-340-0140.

(3) The brokerage or provider organization requesting a variance must submit a written 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) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

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

(e) If the variance applies to the services to an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the brokerage or provider organization and to all relevant Department programs or offices within 45 days from the receipt of the variance request.

(5) The brokerage or provider organization may request an administrator review of the denial of a variance request by sending a written request for review to the Director. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) The brokerage or the provider organization may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0100
Eligibility for Support Services

(1) Individuals determined eligible according to this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) Eligibility of an individual for support services is determined by the CDDP of the county of origin according to OAR 411-320- 0110(8).

(3) Individuals are not eligible for services by more than one brokerage unless the concurrent eligibility:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.40–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0110
Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date, information about the brokerage available to individuals referred for services and the legal or designated representatives of individuals. This information must include:

(a) A declaration of brokerage philosophy;

(b) A brief description of the services provided by the brokerage, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of the individual rights in OAR 411-318-0010, including the right of an individual to:

(A) Choose a brokerage from among Department-contracted brokerages in the county of origin of an individual that is serving less than the total number of individuals specified in the current contract between the brokerage and the Department;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, OAR 411-340-0170, and OAR 411-340-0180 to provide supports authorized through the ISP for the individual;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification of planned action and hearings according to OAR 411-340-0060 and the rules in OAR chapter 411, division 318.

(g) Indication that additional information about the brokerage is available on request. The additional information must include, but not be limited to:

(A) A description of the organizational structure of the brokerage;

(B) A description of any contractual relationships the brokerage has in place, or may establish, to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the Policy Oversight Group of the brokerage.

(2) The brokerage must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of individuals.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) To enter brokerage services:

(A) An individual must be determined eligible according to OAR 411-320-0110; and

(B) The individual must choose to receive services from a selected brokerage.

(b) The Department may implement guidelines that govern entries when the Department has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in the current contract between the brokerage and the Department.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the oral or written request of an individual to end the service relationship;

(B) After an individual, either cannot be located or has not responded after 30 days of repeated attempts by brokerage staff to complete ISP development or monitoring activities;

(C) Upon the entry of an individual into CDDP case management services;

(D) When an individual is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, ICF/ID, or

other 24-hour residential setting and it is determined that the individual is not returning home; or

(E) When an individual does not reside in Oregon or resides in an area outside the geographic service area of the brokerage.

(b) In the event an individual exits a brokerage, a written Notification of Planned Action must be provided as described in OAR 411-340-0060 and OAR chapter 411, division 318.

(c) Each brokerage must have policies and procedures for notifying the CDDP of the county of origin of an individual when the individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and the CDDP of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; DVA 3-2007, f. & cert .ef. 9-25-07; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0120

Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs and plan supports in response to needs;

(b) Case management;

(c) Assistance for individuals to find and arrange the resources to provide planned supports;

(d) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(e) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(f) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of individuals in addition to making payment to providers with the authorization of an individual;

(g) Employer-related supports; and

(h) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in section (1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) PERSONAL AGENT SERVICES.

(a) An individual entered into brokerage services must be assigned a personal agent for case management services.

(b) INITIAL DESIGNATION OF PERSONAL AGENT.

(A) The brokerage must designate a personal agent for individuals newly entered in support services within 10 business days from the date entry becomes known to the brokerage.

(B) In the instance of an individual transferring into a brokerage from another brokerage, the brokerage must designate a personal agent within 10 days of entry to the new brokerage.

(C) The brokerage must send a written notice that includes the name, telephone number, and location of the personal agent or brokerage to the individual, and as applicable the legal or designated representative of the individual, within 10 business days from the date entry becomes known to the brokerage.

(D) Prior to implementation of the initial ISP for an individual, the brokerage must ask the individual to identify any family and other advocates to whom the brokerage must provide the name, telephone number, and location of the personal agent.

(c) CHANGE OF PERSONAL AGENT. Changes of personal agents initiated by the brokerage must be kept to a minimum. If the brokerage must change personal agent assignments, the brokerage must notify the individual, and as applicable the legal or designated representative of the individual, and all current providers within 10 business days of the change. The notification must be in writing and include the name, telephone number, and address of the new personal agent, if known, or of a contact person at the brokerage.

(d) OSIPM/OHP PLUS ELIGIBILITY. If an individual loses OSIPM or OHP Plus eligibility, a personal agent must assist the individual in identifying why OSIPM or OHP Plus eligibility was lost. Whenever possible, the personal agent must assist the individual in becoming eligible for OSIPM or OHP Plus again. The personal agent must document efforts taken to assist the individual in becoming OSIPM or OHP Plus eligible.

(e) CASE MANAGEMENT CONTACT. Every individual who has an ISP must have a case management contact no less than once every three months. Individuals with significant health and safety risks as identified in the ISP must have more frequent case management contact. At least one case management contact per year must be face to face. If an individual agrees, other case management contacts may be made by telephone or by other interactive methods. The outcome of the case management contact must be recorded in the progress notes. The purpose of the case management contact is:

(A) To assure known health and safety risks are adequately addressed;

(B) To assure that the support needs of the individual have not significantly changed; and

(C) To assure that the individual is satisfied with the current supports.

(6) PARTICIPATION IN PROTECTIVE SERVICES. The brokerage and personal agent are responsible for the delivery of protective services, in cooperation with the CDDP when necessary, through the timely completion of activities necessary to address immediate health and safety concerns.

(7) CHOICE ADVISING. Choice advising regarding the provision of case management and other services must be provided to individuals who are eligible for, and desire, developmental disability services. Choice advising must be provided at least annually. Documentation of the discussion must be included in the service record for the individual.

(8) LEVEL OF CARE DETERMINATION.

(a) The brokerage must assure that an individual who is eligible for OHP Plus or OSIPM or who becomes eligible after entry into the brokerage:

(A) Receives a level of care determination prior to accessing services and prior to an initial functional needs assessment;

(B) Is offered the choice between home and community-based services or institutional care;

(C) Is provided a notice of fair hearing rights (Notification of Rights SDS 0948); and

(D) Has the level of care determination reviewed annually not more than 60 days prior to the renewal of the ISP, or at any time there is a significant change in a condition that qualified the individual for the level of care.

(b) A level of care determination may be made by a services coordinator or a personal agent.

(c) The level of care assessment must be documented in a progress note in the record for the individual.

(9) FUNCTIONAL NEEDS ASSESSMENT. The brokerage or CDDP must complete a functional needs assessment initially and at least annually for any individual who is enrolled in, or is expected to enroll in, waiver or Community First Choice state plan services.

(a) A functional needs assessment must be completed:

(A) Not more than 45 days from the date that the individual submitted a completed application to the CDDP or the date the individual became eligible for OHP Plus or OSIPM;

(B) Prior to the development of an initial ISP;

(C) Within 60 days prior to the annual renewal of an ISP; and

(D) Within 45 days from the date an individual requests a functional needs re-assessment.

(b) The assessment must be conducted face to face.

(c) An individual, and as applicable the legal or designated representative of the individual, must participate in a functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-340-0060 and OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the brokerage must mail a notice of the assessment process to the individual to be assessed. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(10) INDIVIDUAL SUPPORT PLANS.

(a) An individual who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The ISP must be facilitated, developed, and authorized by a personal agent.

(B) The initial ISP must be authorized;

(i) No more than 90 days from the date a competed application is submitted to the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made or no more than 45 days from the date the level of care determination was made.

(C) The brokerage must provide a written copy of the most current ISP to the individual and the legal or designated representative of the individual (as applicable).

(D) A personal agent must revise the ISP for the individual as needed if a revision of the ISP is requested by the individual. The revision of the ISP must be completed within 30 days from the request of the individual.

(b) PERSON-CENTERED ISP REQUIREMENTS. The person-centered ISP must reflect the services and supports that are important for the individual to meet the needs of the individual identified through a Department approved assessment, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual and the scope of services and supports, the ISP must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with support needs identified in the assessment of the individual;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Provider type;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) Individually identified goals and desired outcomes;

(J) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(K) The risk factors and the measures in place to minimize the risk factors, including back up plans for assistance with support and service needs;

(L) The identity of the person responsible for case management and monitoring the ISP;

(M) A provision to prevent unnecessary or inappropriate care;

(N) The alternative settings considered by the individual;

(O) Schedule of ISP reviews;

(P) Any changes in support needs identified in an assessment; and

(Q) Any revisions to the ISP that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(c) The ISP must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the people important in supporting the individual.

(d) ISP SCHEDULE. The schedule of the support services ISP, developed in compliance with this rule after an individual enters a brokerage, may be adjusted with the consent of, or at the request of, an individual.

(A) An adjustment may only occur one time per individual upon ISP renewal.

(B) An ISP date adjustment must be clearly documented in the ISP.

(e) ISP AUTHORIZATION.

(A) An initial and annual ISP must be authorized prior to implementation.

(B) A revision to an initial or annual ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(C) A revision to an initial or annual ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented oral agreement to the revision by the individual is required prior to implementation of the revision.

(D) An ISP is authorized when:

(i) The signature of the individual, or as applicable the legal or designated representative of the individual, is present on the ISP or documentation is present explaining the reason an individual who does not have a legal or designated representative may be unable to sign the ISP.

(I) Acceptable reasons for an individual without a legal or designated representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(II) Unavailability is not an acceptable reason for an individual, or as applicable the legal or designated representative of an individual, not to sign the ISP.

(III) In the case of a revision to an initial or annual ISP that is in response to immediate, unexpected change in circumstance, and is necessary to prevent injury or harm to the individual, documented oral agreement may substitute for a signature for no more than 10 business days.

(ii) The signature of the personal agent involved in the development of, or revision to, the ISP is present on the ISP; and

(iii) A designated brokerage representative has reviewed the ISP for compliance with Department rules and policy.

(E) For an individual transferring from in-home comprehensive services to a brokerage, the CDDP ISP may be used as authorization for available support services for up to 90 days.

(f) PERIODIC REVIEW OF ISP AND RESOURCES.

(A) A personal agent must facilitate and document reviews of the ISP and resources for an individual with the individual and the legal or designated representative of the individual (as applicable).

(B) At least annually, as part of preparation for a new ISP, the personal agent must:

(i) Evaluate the progress of the individual toward achieving the purposes of the ISP and assess and revise goals as needed;

(ii) Note effectiveness of the use of support services funds based on personal agent observation as well as individual satisfaction; and

(iii) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(11) ANNUAL PLANS. An Annual Plan must be completed for individuals who do not access waiver or Community First Choice state plan services.

(a) A personal agent must complete an Annual Plan within 60 days of the entry of an individual into support services, and annually thereafter if the individual is not enrolled in any waiver or Community First Choice state plan services.

(b) A written Annual Plan must be documented as an Annual Plan or as a comprehensive progress note in the record for the individual and consist of:

(A) A review of the current living situation of the individual;

(B) A review of any personal health, safety, or behavioral concerns;

(C) A summary of the support needs of the individual; and

(D) Actions to be taken by the personal agent and others.

(12) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Service Plan must be present when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be

attached to the ISP when an individual enrolled in a brokerage is in emergent status in a short-term, out-of-home, residential placement as part of the crisis diversion services for the individual.

(c) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(13) TRANSITION TO ANOTHER BROKERAGE OR TO A CDDP. At the request of an individual enrolled in brokerage services who has selected another brokerage or CDDP to provide case management and to arrange services, the brokerage must collaborate with the receiving brokerage or CDDP of the county of origin of the individual to transition case management and other authorized services.

(a) If an individual requests case management services from a CDDP, the brokerage must notify the local CDDP of the request within five business days. Planning for a transfer of case management services must begin within ten business days of the request unless a later date is mutually agreed upon by the individual, the brokerage, and the CDDP.

(b) An individual may request case management services from another brokerage when the selected brokerage has capacity available within the limits of the contract between the brokerage and the Department.

(c) If an individual requests case management services from an available brokerage, the brokerage must notify the local CDDP of the request within five business days. Planning for a transfer of case management services to the available brokerage must begin within ten business days of the request unless a later date is mutually agreed upon by the individual, the brokerage, and the CDDP of the county of origin of the individual.

(d) If the Department has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Department to consider transfer of the funds for the individual to the receiving brokerage.

(e) The ISP in place at the time of the transfer may remain in effect 90 days after entry to the new brokerage while a new ISP is developed and authorized.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0125
Crisis Supports in Support Services

(1) The brokerage must, in conjunction with its Regional Crisis Diversion Program, attempt to provide supports that mediate a crisis risk factor for adults who are:

(a) Entered in support services; and

(b) Determined to be in crisis as described in section (2) of this rule.

(2) CRISIS DETERMINATION.

(a) An individual enrolled in support services is eligible for crisis diversion services when:

(A) A brokerage has referred an individual to the Regional Crisis Diversion Program because the brokerage has determined that one or more of the following crisis risk factors, not primarily related to a significant mental or emotional disorder or substance abuse, are present and for which no appropriate alternative resources are available:

(i) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(ii) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(iii) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(iv) An individual undergoes, or is at imminent risk of undergoing, loss of primary caregiver due to the inability of the primary caregiver to provide supports;

(v) An individual experiences a loss of home due to a protective service action; or

(vi) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(I) A pattern of physical aggression serious enough to cause injury;

(II) Fire-setting behaviors; or

(III) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(B) The Regional Crisis Diversion Program has determined crisis eligibility according to OAR 411-320-0160; and

(C) The ISP for the individual has been revised to address the identified crisis risk factors and the revisions:

(i) May resolve the crisis; and

(ii) May not contribute to new or additional crisis risk factors.

(b) A functional needs assessment must be completed for any individual determined to be in crisis as described in this section of this rule.

(3) CRISIS SUPPORTS.

(a) An ISP for an individual in emergent status may authorize short-term, out-of-home, residential placement. Residential placement does not exit an individual from support services.

(b) The personal agent of the individual must:

(A) Participate with the Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the service level;

(B) Assist with the identification of qualified providers who may be paid in whole, or in part, using crisis diversion funding except in the case of short-term, out-of-home, residential placements with a licensed or certified provider;

(C) Complete and coordinate the Support Services Brokerage Crisis Addendum when an individual in emergent status requires a short-term, out-of-home, residential placement; and

(D) Monitor the delivery of supports provided, including those provided through crisis funding.

(i) Monitoring is done through contact with the individual, any providers, and the legal or designated representative and family of the individual (as applicable).

(ii) Monitoring is done to collect information regarding supports provided and progress toward outcomes that are identified as necessary to resolve the crisis.

(iii) The personal agent must document the information described in subparagraph (ii) of this paragraph in the record for the individual and report to the Regional Crisis Diversion Program or CDDP as required.

(c) Support services provided during emergent status are subject to all requirements of this rule.

(d) All supports authorized in an ISP continue during the crisis unless prohibited by other rule, policy, or the supports contribute to new or additional crisis risk factors.

(4) TRANSITION TO COMPREHENSIVE SERVICES. When an individual eligible for crisis supports may have long-term support needs that may not be met through support services:

(a) The brokerage must immediately notify the CDDP of the county of origin of the individual;

(b) The brokerage must coordinate with the CDDP and the Regional Crisis Diversion Program to facilitate a timely exit from support services and entry into appropriate, alternative services; and

(c) The brokerage must assure that information required for a potential provider of comprehensive services is available as needed for a referral to be made.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0130
Using Support Services Funds to Purchase Supports

(1) Support services funds may be used to assist individuals to purchase supports described in section (8) of this rule, in accordance with an ISP when:

(a) The supports are necessary for an individual to live in his or her own home or in the family home or meet individual support needs;

(b) For Community First Choice state plan services, the support shall address a need that has been determined to be necessary by a functional needs assessment;

(c) An enrolled individual meets the criteria for level of care;

(d) The individual is eligible for the services as described in section (8) of this rule;

(e) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP for the individual;

(A) Support services funds are not intended to replace the resources available to an individual from the voluntarily provided natural supports of the individual.

(B) Support services funds are not available when the support needs of an individual may be met by alternative resources. Support services

funds may be authorized only when alternative resources are unavailable, insufficient, or inadequate to meet the needs of the individual.

(f) The ISP has been authorized for implementation.

(2) A brokerage may use support services funds to assist individuals that do not meet the criteria in section (1)(d) of this rule when, up to the 18th birthday of the individual, the individual was receiving children's intensive in-home services as described in OAR chapter 411, division 300 or in-home supports as described in OAR chapter 411, division 308.

(3) An individual is no longer eligible to access support services funds when the individual is eligible for support services funds based on section (2) of this rule; and

(a) The individual does not apply for a disability determination and Medicaid within 10 business days of the 18th birthday of the individual;

(b) The Social Security Administration or the Presumptive Medicaid Disability Determination Team of the Department finds that the individual does not have a qualifying disability; or

(c) The individual is determined by the state of Oregon to be ineligible for OHP Plus and OSIPM.

(4) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(5) POST ELIGIBILITY TREATMENT OF INCOME. Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

(6) SERVICE LIMITS. The use of support services funds to purchase individual supports is limited to:

(a) The service level for an individual as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State plan personal care services as described in OAR chapter 411, division 034.

(b) Other services and supports determined by a personal agent to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(7) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals in the amount required to implement an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or families of individuals for expenses related to services and from advancing funds to individuals or families of individuals to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the legal or designated representative of the individual (as applicable).

(8) TYPES OF SUPPORTS. Supports eligible for purchase with support services funds must be consistent with the In-home Expenditure Guidelines and are limited to:

(a) Community First Choice state plan services. An individual who is eligible for OHP Plus and meets the Level of Care may access Community First Choice state plan services when supported by an assessed need.

(b) Transfer of Assets.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan made evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540.

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(c) Community First Choice state plan services include:

(A) Behavior support services as described in section (9) of this rule;

(B) Community nursing services as described in section (10) of this rule;

(C) Environmental modifications as described in section (11) of this rule; and

(D) Attendant care as described in section (12) of this rule;

(E) Skills training as described in section (13) of this rule;

(F) Relief care as described in section (14) of this rule;

(G) Assistive devices as described in section (15) of this rule;

(H) Assistive technology as described in section (16) of this rule;

(I) Chore services as described in section (17) of this rule;

(J) Community transportation as described in section (18) of this rule;

(K) Transition costs as described in section (19) of this rule; and

(L) Home delivered meals as described in OAR chapter 411, division 040.

(d) Individuals who are eligible for OSIPM and meet the Level of Care may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management as defined in OAR 411-340-0020;

(B) Employment services as described in section (20) of this rule that include:

(i) Supported employment — individual employment support;

(ii) Supported employment — small group employment support;

(iii) Employment path services; and

(iv) Discovery and career exploration services.

(C) Family training as described in section (21) of this rule;

(D) Special diets as described in section (22) of this rule;

(E) Environmental safety modifications as described in section (23) of this rule;

(F) Vehicle modifications as described in section (24) of this rule; and

(G) Specialized medical supplies as described in section (25) of this rule.

(e) State Plan personal care as described in OAR chapter 411, division 34.

(9) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the family of the individual and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan, by a qualified behavior consultant as described in OAR 411-340-0160, if needed;

(C) Implementing the Behavior Support Plan with the provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of an individual;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by an individual, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of an individual at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Skills training; or

(H) Relief care.

(10) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when support services funds are used for community nursing services. A personal agent must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(11) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(P) Adaptations to control lights, heat, stove, etc.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the needs assessment and ISP for an individual.

(d) Environmental modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work as defined in OAR 411-340-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) Personal agents must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the primary residence of the individual.

(m) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding materials and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(12) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene — providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Delegated nursing tasks;

(F) First aid and handling emergencies — addressing medical incidents related to the conditions of an individual, such as seizure, aspiration, constipation, or dehydration, responding to the call of the individual for help during an emergent situation, or for unscheduled needs requiring immediate response;

(G) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and

(H) Observation of the status of an individual and reporting of significant changes to a physician, health care provider, or other appropriate person.

(b) IADL services include, but are not limited to:

(A) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment — cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Meal preparation and special diets;

(D) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability — helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions;

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Support in the community around socialization and participation in the community.

(i) Support with socialization — assisting an individual in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation — assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(iii) Support with communication — assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(13) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the personal agent must reassess or redefine the use of skills training with the individual for that particular goal.

(14) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The home of the individual;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the individual or the representative of the individual, that is a safe setting for the individual; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(15) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of assistive devices with support service funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to perceive, control, or communicate within the home and community environment in which the individual lives.

(b) Assistive devices may be purchased with support service funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices; and

(B) Assistive devices, not provided by any other funding source, to assist and enhance the independence of an individual in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a personal agent, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, and supplies furnished under OHP, the state plan, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the individual or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for an individual;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(16) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology;

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for on-going electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(17) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(18) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP of the individual:

(A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or

(B) The individual has either an assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination;

(c) Community transportation must be provided in the most cost effective manner which meets the needs identified in the ISP for the individual.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a personal agent and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the brokerage and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation services exclude:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the individual;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the individual;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members who are not personal support workers and are not simultaneously providing other paid supports at the time of the transportation;

(J) Payment to the spouse of an individual receiving support services;

(K) Reimbursement for out-of-state travel expenses; and

(L) Mileage reimbursement for the vehicle of the supported individual.

(19) TRANSITION COSTS.

(a) Transition costs are limited to an individual transitioning to the home or community-based setting where the individual resides from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on the assessed need of an individual determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(20) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(21) FAMILY TRAINING. Family training services are provided to the family of an individual to increase the abilities of the family to care for, support, and maintain the individual in the home of the individual.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of an individual; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a personal agent, directly relate to the intellectual or developmental disability of the individual, and increase the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for individual family members who are employed to care for the individual.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the brokerage is required for attendance by family members at organized conferences and workshops funded with support services funds.

(22) SPECIAL DIET. Special diets are specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to the medical condition or diagnosis of an individual that are needed to sustain the individual in the home of the individual. Special diets are supplements and are not intended to meet the complete daily nutritional requirements of the individual. Special diet supplies must be supported by an evidence-based treatment regimen.

(23) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates, such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the home that are of general utility and are not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental safety modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work as defined in OAR 411-340-0020 must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(j) A personal agent must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental safety modifications must only be completed to the primary residence of the individual.

(n) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(o) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(24) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to the individual or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(25) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(26) Educational services, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills, are not allowable expenses covered by support services funds.

(27) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that enable the individual to freely choose to receive supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds may not be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, service agreements, and timekeeping for staff working with more than one individual; and

(D) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental modifications to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; and

(g) In accordance with the In-home Expenditure Guidelines.

(28) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected abuse;

(b) Responsibility to immediately notify the people, if any, specified by the individual of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family of the individual, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP for an individual.

(d) The provisions of section (29) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(29) PROVIDER TERMINATION.

(a) The provider enrollment for a personal support worker is terminated as described in OAR chapter 411, division 375.

(b) An independent provider who is not a personal support worker may have their provider enrollment terminated in the following circumstances:

(A) The provider has not provided any paid in-home services to an individual within the last previous 12 months;

(B) The provider informs the Department, CDDP, CIIS, or brokerage that the personal support worker is no longer providing in-home services in Oregon;

(C) The background check for a provider results in a closed case pursuant to OAR 407-007-0325;

(D) Services to an individual, is being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future individuals; or

(E) Provider payments, all or in part, for the provider have been suspended based on a credible allegation of fraud or has a conviction of for fraud pursuant to federal law under 42 CFR 455.23.

(c) Provider enrollment may be terminated when the brokerage or Department determines that, at some point after the initial qualification and authorization of the provider to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated adult abuse;

(F) Failed to cooperate with any Department or brokerage investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made a false statement concerning conviction of crime or substantiated abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (28) of this rule or OAR 411-340-0140;

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(L) Violated the requirement to maintain a drug-free work place;

(M) Failed to provide services as required;

(N) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(O) Has been excluded or debarred by the Office of the Inspector General.

(d) If the brokerage or Department makes a decision to terminate provider enrollment, the Department must issue a written notice that includes:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in subsection (b) and (c) of this section; and

(C) The appeal rights of the individual, including where to file the appeal; and

(D) For terminations based on substantiated abuse allegations, only the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(E) The effective date of the termination.

(e) The provider may appeal a termination within 30 days from the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a termination by requesting an administrator review by the Director of the Department.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days from the date the termination notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0135

Standards for Employers

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by an individual to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP. The service agreement serves as a written job description for the employed personal support worker.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) INTERVENTION. For the purpose of this rule, "intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if an individual is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

(a) For an individual to be eligible for support provided by a personal support worker, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

(E) Recognize, discuss, and attempt to correct, with the personal support worker, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory personal support worker.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department or Brokerage as defined in section (4) of this rule;

(C) Frequent errors on timesheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or Brokerage;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department or Brokerage of services not being delivered as identified in an ISP.

(c) The Department or the Brokerage may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) An individual may not receive support provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section.

(A) An individual determined ineligible to be an employer of a personal support worker and unable to designate an employer representative, may not request support provided by a personal support worker until the next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the ability of the individual to meet the employer responsibilities described in subsection (a) of this section. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of a personal support worker is offered other available service options that meet the service needs of the individual, including support through a contracted qualified provider organization or general business provider when available. As an alternative to in-home support, the Department or the designee of the Department may offer other available services through the Home and Community Based Services Waiver or State Plan.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) An individual not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the individual to receive or continue to receive in home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide support for the individual.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the individual is not able to meet in order for the individual to receive or continue to receive support provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the employer representative of the individual.

(c) When the employer representative of an individual is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, an individual must:

(A) Designate a different employer representative in order for the individual to receive or continue to receive in home support provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide in-home support for the individual.

(7) EMPLOYER REPRESENTATIVE.

(a) An individual, or the legal representative of an individual, may designate an employer representative to act on behalf of the individual, to meet the employer responsibilities described in section (5)(a) of this rule. The legal or designated representative of an individual may be the employer.

(b) An employer who is also the personal support worker of support must seek an alternate employer for purposes of the employment of the personal support worker. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

(B) Document the specific employer responsibilities performed by the employer on a Department approved form.

(c) The Department or the Brokerage may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b).

(d) If the Department or Brokerage suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, an individual may select another employer representative.

(8) NOTICE.

(a) The Department or the Brokerage, respectively, shall mail a notice identifying the individual, and if applicable the employer representative and legal or designated representative of the individual, when:

(A) The Department or the Brokerage denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department or the Brokerage denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

(b) BROKERAGE ISSUED NOTICES. An individual receiving support from a personal support worker, or as applicable the legal or designated representative or employer representative of the individual, may appeal a notice issued by the Brokerage by requesting a review by Director of the Brokerage.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for review must be received by the Brokerage within 45 days from the date of the notice.

(B) The Brokerage Director shall complete a review and issue a decision within 30 days of the date the written appeal was received by the Brokerage.

(C) If an individual, or as applicable the legal or designated representative or employer representative of the individual, is dissatisfied with the decision of the Brokerage Director, the individual, or as applicable the legal or designated representative or employer representative of the individual, may request an administrator review by the Director of the Department.

(D) For an appeal of the decision of the Brokerage to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 15 days from the date of the decision of the Brokerage.

(E) The Director shall complete an administrator review within 30 days from the date the written appeal was received by the Department.

(F) The determination of the Director is the final response from the Department.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving support from a personal support worker, or as applicable the legal or designated representative of the individual, may appeal a notice issued by the Department by requesting an administrator review by the Director of the Department.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 45 days of the date of the notice.

(B) The Director shall complete an administrator review and issue a decision within 30 days from the date the written appeal was received by the Department.

(C) The determination of the Director is the final response from the Department.

(d) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating an individual from in-home support, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050, 427.402, 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400-410, 430.610, 430.620, 430.662-695

Hist.: APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of individuals, individuals' legal representatives, employees of general business providers, or employees of provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) Support services funds may not be used to pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(c) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(d) Individual or family vehicles;

(e) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medications;

(B) Health insurance co-payments;

(C) Dental treatments and appliances;

(D) Medical treatments;

(E) Dietary supplements, including but not limited to vitamins and experimental herbal and dietary treatments; or

(F) Treatment supplies not related to nutrition, incontinence, or infection control.

(f) Ambulance services;

(g) Legal fees;

(h) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community-based settings;

(i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(k) Educational services for school-age individuals over the age of 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services, such as those provided through two- or four-year colleges for individuals of all ages;

(l) Services provided in a nursing facility, correctional institution, or hospital;

(m) Services, activities, materials, or equipment that may be obtained by the individual or the individual's family through alternative resources or natural supports;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that an individual, or as applicable the legal or designated representative of the individual, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use

brokerage resources, or otherwise knowingly misused public funds associated with brokerage services;

(q) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need; or

(r) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized consumer safety agencies.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0150

Standards for Support Services Brokerage Administration and Operations

(1) POLICY OVERSIGHT GROUP. The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with intellectual or developmental disabilities and family members of individuals with intellectual or developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) FULL-TIME BROKERAGE DIRECTOR REQUIRED. The brokerage must employ a full-time director who is responsible for the daily operations of the brokerage in compliance with these rules and who has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) DIRECTOR QUALIFICATIONS. In addition to the general staff qualifications of OAR 411-340-0070(1) and (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years' experience, including supervision, in the field of intellectual or developmental disabilities, social services, mental health, or a related field; or

(b) Six years of experience, including supervision, in the field of intellectual or developmental disabilities, social services, or mental health.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) A fiscal intermediary must:

(A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in the individuals' ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an individual's authorized ISP.

(c) FISCAL INTERMEDIARY QUALIFICATIONS.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support services funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services.

(B) The brokerage must obtain and maintain written evidence that:

(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

(5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in a behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field and one year of human services related experience, such as work providing assistance to individuals and groups with issues, such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(C) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience, such as work providing assistance to individuals and groups with issues, such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(D) Three years of human services related experience.

(b) A brokerage must submit a written variance request to the Department prior to employing a person not meeting the minimum qualifications for a personal agent set forth in subsection (a) of this section. The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies.

(i) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(ii) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary services;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support plans; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual receiving services and must make these records available to the Department upon request. The individual or the individual's legal representative may access any portion of the individual's record upon request. Individual records must include, at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal or designated representative (if applicable), address, telephone number, date of entry into the program, date of birth, gender, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual, or as applicable the individual's legal or designated representative, that the individual, or as applicable the individual's legal or designated representative, has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) The completed functional needs assessment and other assessments used to determine supports required, preferences, and resources;

(h) ISP and reviews. If an individual is unable to sign the ISP, the individual's record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible;

(i) Names of those who participated in the development of the ISP. If an individual was not able to participate in the development of the ISP, the individual's record must document the reason;

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe, at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(k) Personal agent correspondence and notes related to resource development and plan outcomes;

(l) Progress notes. Progress notes must include documentation of the delivery of services by a personal agent to support each case service provided. Progress notes must be recorded chronologically and documented consistent with brokerage policies and procedures. All late entries must be appropriately documented. Progress notes must, at a minimum, include:

(A) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(B) The name of the individual receiving services;

(C) The name of the brokerage, the person providing the service (i.e., the personal agent's signature and title), and the date the entry was recorded and signed;

(D) The specific services provided and actions taken or planned, if any;

(E) Place of service. Place of service means the name of the brokerage and where the brokerage is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(F) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.

(m) Information about individual satisfaction with personal supports and the brokerage's services.

(8) SPECIAL RECORD REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with an individual's authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, assistive devices, environmental safety modifications, and environmental modifications.

(i) When an assistive device is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than $500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties if the item is lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental modifications and environmental safety modifications involving renovation or new construction in an individual's home or property costing $5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by the Department before work begins and before final payment is made;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(b) Any goods purchased with support services funds that are not used according to an individual's ISP or according to an agreement securing the state's use may be immediately recovered.

(c) Failure to furnish written documentation upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, immediately or within timeframes specified in the written request, may be deemed reason to recover payments or deny further assistance.

(9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review the plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of individuals, legal or designated representatives, professionals, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas, such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs, and preferences of the individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(10) BROKERAGE REFFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services that an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services are cost-effective and best-suited to provide the services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the individual's ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity that the brokerage is a part of, or otherwise directly affiliated, to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual, or as applicable the individual's legal or designated representative, without bias;

(C) A process for arriving at the option for selecting a provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services purchased by an individual enrolled in the brokerage by an entity that the brokerage is a part of or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to the selection of providers.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish the brokerage's objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0160
Standards for Independent Providers Paid with Support Services Funds

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is not a personal support worker who is paid as a contractor or a self-employed person that is selected to provide the services and supports in OAR 411-340-0130 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Department Background Check Request form must be completed by the subject individual to show intent to work statewide;

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(B) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home support, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be legally eligible to work in the United States;

(e) Not be the spouse of an individual receiving services;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified the ISP, with such demonstration confirmed in writing by the individual, or as applicable the individual's legal or designated representative, and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual.

(g) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding individual information;

(i) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General (http://exclusions.oig.hhs.gov/);

(j) If transporting an individual, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation; and

(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(3) Section (2)(c) of this rule does not apply to employees of individuals, legal or designated representatives, employees of general business providers, or employees of provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(5) Independent providers, including personal support workers, are not employees of the state, CDDP, or Brokerage.

(6) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-340-0130;

(b) Have received current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years' experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-340-0130.

(7) NURSE. A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license;

(b) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(c) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals.

(8) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0170
Standards for Provider Organizations Paid with Support Services Funds

(1) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for a 24-hour residential setting, or licensed under OAR chapter 411, division 360 for an adult foster home, or certified and endorsed under OAR chapter 411, division 345 for employment services or OAR chapter 411, division 328 for a supported living setting, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(a) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to ISPs; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet the standards for qualification of independent providers described in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and

receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION. A provider organization without a current license or certification as described in section (1) of this rule must be certified as a provider organization according to OAR 411-340-0030 prior to selection for providing the services listed in OAR 411-340-0130 and paid for with support services funds.

(a) The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, 411-340-0050, 411-340-0070, 411-340-0080, and 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have, and implement, written policies and procedures that protect the individual rights described in OAR 411-318-0010 and that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide services to individuals;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the name of the staff member or provider organization to the bank account or other personal property of the individual without approval of the individual or the legal representative of the individual (as applicable).

(C) Complaints.

(i) Complaints must be addressed in accordance with OAR 411-318-0015.

(ii) The provider organization must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(iii) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

(D) Policies and procedures appropriate to scope of service including, but not limited to, those required to meet minimum standards set forth in subsections (f) to (k) of this section and consistent with written service agreements for individuals currently receiving services.

(b) The provider organization must deliver services according to a written service agreement.

(c) The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The name, current home address, and home phone number of the individual;

(B) A current written service agreement signed and dated by the individual;

(C) Contact information for the legal or designated representative of the individual (as applicable) and any other people designated by the individual to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors, or volunteers must have current CPR and first aid certification obtained from a recognized training agency prior to working alone with an individual.

(e) The provider organization must ensure that employees, contractors, and volunteers receive appropriate and necessary training.

(f) Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites, must meet the following minimum requirements:

(A) A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information:

(i) The telephone numbers of the local fire, police department, and ambulance service, or "911" must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director and other people to be contacted in case of emergency must be posted by designated telephones.

(C) A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. Safety review reports must be kept in a central location by the provider organization for three years.

(D) The provider organization must train all individuals when the individuals begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. The written documentation must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or the individual's legal or designated representative (as applicable), and the provider organization director; and

(II) Be submitted as a variance request according to OAR 411-340-0090.

(E) The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) At least once every three years, the provider organization must conduct a health and safety inspection.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, including administrative offices and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Division;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert, such as a licensed safety engineer or consultant as approved by the Department; and

(IV) The Oregon Health Authority, Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used at the service site;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(G) The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present. When individuals are present, staff must have the following minimum skills and training:

(i) At least one staff member on duty with CPR certification at all times;

(ii) At least one staff member on duty with current First Aid certification at all times;

(iii) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and

(iv) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing, and disposing of prescription and non-prescription drugs, including self-administration;

(iv) Emergency medical procedures, including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when an individual is unable to self-administer medications and there is no other responsible person present who may lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders;

(vi) Not administer unused, discontinued, outdated, or recalled drugs; and

(vii) Not administer PRN psychotropic medication. PRN orders may not be accepted for psychotropic medication.

(D) Maintain a MAR (if required). The MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of a review by the provider organization director.

(E) Provide safeguards to prevent adverse medication reactions, including:

(i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness, or effects to the individual or the individual's legal or designated representative (as applicable); and

(iii) Prohibiting the use of one individual's medications by another individual or person.

(F) Maintain a record of visits to medical professionals, consultants, or therapists if facilitated or provided by the provider organization.

(h) Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry a first aid kit in each vehicle; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization's or another individual's funds, or the provider organization becoming an individual's legal or designated representative; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 business days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) The provider organization must have, and implement, a written policy concerning behavior intervention procedures. The provider organization must inform the individual, and as applicable the individual's legal or designated representative, of the behavior intervention policy and procedures prior to finalizing the individual's written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal or designated representative (as applicable); and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by a physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve protective physical intervention.

(A) The provider organization must only employ protective physical intervention:

(i) As part of an individual's ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Provider organization staff members who need to apply protective physical intervention under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Protective physical intervention in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director or the physician of the individual within one hour of application of the protective physical intervention;

(iii) Result in the immediate notification of the individual's legal or designated representative (as applicable); and

(iv) Prompt a review of the individual's written service agreement, initiated by the provider organization, if protective physical intervention is used more than three times in a six month period.

(D) Protective physical intervention must be designed to avoid physical injury to an individual or others and to minimize physical and psychological discomfort.

(E) All use of protective physical intervention must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the protective physical intervention is applied;

(ii) The date, type, and length of time of the application of protective physical intervention;

(iii) The name and position of the person authorizing the use of the protective physical intervention;

(iv) The name of the staff member applying the protective physical intervention; and

(v) Description of the incident.

(l) Additional standards for supports that involve employment services are found in OAR 411-345-0160.

(3) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Conditions;

(b) Denial, revocation, or refusal to renew a certificate; or

(c) Immediate suspension of a certificate.

(4) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the provider organization. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The provider organization is not being operated in compliance with these rules.

(c) Conditions that the Department may impose on a certificate include, but are not limited to:

(A) Restricting the total number of individuals to whom a provider organization may provide services;

(B) Restricting the total number of individuals to whom a provider organization may provide services based upon the capability and capacity of the provider organization and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the provider organization may provide to individuals based upon the capability and capacity of the provider organization and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the provider organization from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the provider organization when the Department imposes conditions on the certificate of the provider organization. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The provider organization may request a hearing in accordance with ORS Chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing.

(A) The provider organization must request a hearing within 21 days of receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, a provider organization may request an administrative review as described in section (7) of this rule. The administrative review does not diminish a provider organization's right to a hearing.

(f) The provider organization may send a written request to the Department to remove a condition if the provider organization believes the situation that warranted the condition has been remedied.

(5) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the provider organization, or any person holding 5 percent or greater ownership interest in the provider organization:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the provider organization fails to correct the non-compliance within 30 days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of services;

(D) Has been convicted of a misdemeanor associated with the operation of a provider organization or services;

(E) Falsifies information required by the Department to be maintained or submitted regarding individual services, provider organization finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified provider organization, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The provider organization must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION. The provider organization must request a hearing within 21 days from the receipt of the written notice of revocation.

(i) In addition to, or in-lieu of a hearing, the provider organization may request an administrative review as described in section (7) of this rule.

(ii) The administrative review does not diminish the right of the provider organization to a hearing.

(6) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the provider organization, immediately suspend a certificate without a pre-suspension hearing and the provider organization may not continue operating.

(b) HEARING. The provider organization may request a hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

(A) The provider organization must request a hearing within 21 days from the receipt of the written notice of suspension.

(B) In addition to, or in-lieu of a hearing, the provider organization may request an administrative review as described in section (7) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish right of the provider organization to a hearing.

(7) ADMINISTRATIVE REVIEW.

(a) The provider organization, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The provider organization may submit, along with the written request for an administrative review, any additional written materials the provider organization wishes to have considered during the administrative review.

(c) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the provider organization.

(d) The provider organization may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(8) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (7) of this rule, a provider

organization requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

411-340-0180

Standards for General Business Providers Paid with Support Services Funds

(1) General business providers providing services to individuals and paid with support services funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation, including but not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board);

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon;

(g) For vendors and medical supply companies assistive devices or specialized medical supplies, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(h) A current business license for providers of personal emergency response systems; and

(i) Retail business licenses for vendors and supply companies providing special diets.

(2) Services provided and paid for with support services funds must be limited to the services within the scope of the license of the general business provider.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1920, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Employment Services for Adults with Intellectual or Developmental Disabilities

Adm. Order No.: APD 45-2014

Filed with Sec. of State: 12-26-2014

Certified to be Effective: 12-28-14

Notice Publication Date: 11-1-2014

Rules Adopted: 411-345-0027, 411-345-0085

Rules Amended: 411-345-0010, 411-345-0020, 411-345-0025, 411-345-0030, 411-345-0050, 411-345-0090, 411-345-0095, 411-345-0110, 411-345-0130, 411-345-0140, 411-345-0160, 411-345-0170, 411-345-0180, 411-345-0190, 411-345-0200, 411-345-0230, 411-345-0240, 411-345-0250, 411-345-0260, 411-345-0270

Rules Repealed: 411-345-0100, 411-345-0010(T), 411-345-0020(T), 411-345-0025(T), 411-345-0027(T), 411-345-0030(T), 411-345-0050(T), 411-345-0085(T), 411-345-0090(T), 411-345-0095(T), 411-345-0110(T), 411-345-0130(T), 411-345-0140(T), 411-345-0160(T), 411-345-0170(T), 411-345-0180(T), 411-345-0190(T), 411-345-0200(T), 411-345-0230(T), 411-345-0240(T), 411-345-0250(T), 411-345-0260(T), 411-345-0270(T)

Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 345 for employment services for adults with intellectual or developmental disabilities to reflect the following:

Alignment with the rules in OAR chapter 407, division 025, Executive Order No.13-04, and Oregon's "Employment First" policy;

Alignment with the 1915(c) Home and Community-Based Services waivers and the services available under the waivers;

Alignment with the Executive Order by outlining the requirements for a Career Development Plan completed as a part of the annual Individual Support Plan (ISP);

Changes to provider types who may deliver employment services;

Changes in the funding authority for non-employment services from the 1915(c) Home and Community-Based Services waiver to the 1915(k) Community First Choice state plan amendment; and

Alignment of provider qualifications and requirements with the rules in OAR chapter 407, division 025 and Executive Order No. 13-04.

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Change the references to "alternatives to employment" to "attendant care" or "skills training" where appropriate;

Incorporate the general definitions in OAR 411-317-0000 and update the definitions relating to employment and other available services, provider types, and service descriptions;

Describe who is eligible to receive services as described in these rules and assure employment services are only available to individuals who are eligible for OSIPM;

Update provider requirements consistent with the 1915(c) Home and Community-Based Services waiver, incorporate new provider types, and include qualifications for providers by service type;

Assure that adequate documentation of services is kept by providers;

Incorporate limits to employment services as described in the 1915(c) Home and Community-Based Services waivers;

Account for the adoption of rules in OAR chapter 411, division 318 and to recognize the authority of that rule in matters of complaints, individual rights, Notification of Planned Action, and hearings;

Require and describe a Career Development Plan;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-345-0010

Statement of Purpose

(1) These rules, OAR 411-345-0010 through 411-345-0270, effectuate Oregon's Employment First policy under which the employment of individuals with developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities.

(2) For those who successfully achieve the goal of competitive integrated employment, future service planning focuses on maintaining employment or considering additional career or advancement opportunities.

(3) Employment services are considered and provided using a person-centered approach based on informed choice and consistent with the philosophy of self-determination.

(4) These rules prescribe service standards and requirements for providing employment services and the qualifications and eligibility requirements for employment services for adults with intellectual or developmental disabilities. These rules also prescribe the standards and procedures by which the Department endorses agency service providers to provide employment services.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 345:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(4) "Agency Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified by the Department to provide services under these rules and is endorsed under these rules or the rules in OAR chapter 411, division 323.

(5) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-345-0025.

(6) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(7) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(8) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(9) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, service providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(10) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.

(11) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.206(a)(1)) or the rate specified in the applicable state or local minimum wage law; and

(ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where an employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions; and(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(12) "Customized Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer.

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

(14) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or the legal representative of the individual is not required to appoint a designated representative.

(15) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(16) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(17) "Discovery" is a comprehensive and person-centered employment planning support service to better inform an individual seeking an individualized job in a competitive integrated employment setting and create a Discovery Profile. Discovery includes a series of work or volunteer related activities to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as identify the conditions and settings in which the individual will be successful. Discovery is also an opportunity for the individual to begin active pursuit of competitive integrated employment.

(18) "Discovery Profile" is a comprehensive and person-centered report produced as an outcome of discovery, representing an individual and providing information to better inform employment service planning and job development activities. The Discovery Profile includes information about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as information about conditions and settings for the success of the individual.

(19) "Employment Path Services" means services to provide learning and work experiences, including volunteer opportunities, for an individual to develop general, non-job-task-specific strengths, and skills that contribute to employability in competitive integrated employment settings.

(20) "Employment Service" means a service that has obtaining and maintaining competitive integrated employment as the primary goal. Employment services include supported employment - individual employment support (job coaching and job development), supported employment - small group employment support, discovery, and employment path services. Employment services do not include vocational assessments in sheltered workshops or facility-based settings.

(21) "Employment Professional" means an employee of an agency service provider, an independent provider, or an employee of an independent provider who has specific qualifications and training to provide employment services under these rules, including supported employment - individual employment support (job coaching and job development), supported employment - small group employment support, discovery, and employment path services.

(22) "Endorsement" means the authorization issued by the Department to a certified agency service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(23) "Entry" means admission to a Department-funded developmental disability service.

(24) "Evidence-Based Practices" means well-defined best practices, which have been demonstrated to be effective by multiple peer-reviewed research studies that are specific to the relevant population or subset of that population.

(25) "Executive Director" means the person designated by a board of directors or corporate owner of an agency service provider who is responsible for the administration of agency provided employment services, attendant care, and skills training.

(26) "Exit" means termination or discontinuance of a Department-funded developmental disability service by an agency service provider.

(27) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(28) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment may be the Adult Needs Assessment (ANA), Child Needs Assessment, Support Needs Assessment Profile (SNAP), or Supports Intensity Scale (SIS).

(A) Effective December 31, 2014, the Department incorporates Version C of the ANA and CNA into these rules by this reference.

(i) The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/ANAadultInhome.xls.

(ii) The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls.

(B) The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.

(C) The Department incorporates the SIS into these rules by this reference.

(c) A printed copy of a blank functional needs assessment may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(29) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(30) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(31) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(32) "Independent Provider" means a qualified person who is contracted or employed by an individual to provide employment services based on the ISP for the individual.

(33) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.

(34) "Integrated Employment Setting" means employment at a location where an employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(35) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources that are used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(36) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(37) "Involuntary Reduction" means an agency service provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(38) "Involuntary Transfer" means an agency service provider has made the decision to transfer an individual to be served at another site without prior approval from the individual.

(39) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(40) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator or personal agent, and others chosen by the individual, such as service providers and family members.

(41) "Job Coaching" means support for an individual to maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(42) "Job Development" means support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(43) "Legal Representative" means an attorney at law who has been retained by or for an individual, an individual acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.

(44) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(45) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(46) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques used to maintain health and safety.

(47) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(48) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, service providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(49) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(50) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(51) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(52) "Productivity" as defined in ORS 427.005 means regular engagement in income producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement, or engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.

(53) "Protection" means the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the

individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(54) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(55) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(56) "Self-Determination" means a philosophy and process by which an individual is empowered to gain control over the selection of services and supports that meets the needs of the individual. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual to declare a chosen employment path and to plan supports accordingly;

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role of an individual in the community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(57) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(b) For employed personal support workers, the service agreement serves as the written job description.

(58) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(59) "Service Provider" means:

(a) An agency service provider as defined by these rules;

(b) An independent provider, as defined by these rules, qualified to provide services under these rules; or

(c) A personal support worker as defined in OAR 411-375-0010, qualified to provide services under these rules.

(60) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(61) "Sheltered Workshop" means the service as defined under OAR 407-025-0010.

(62) "Skills Training" means the activities described in OAR 411-345-0025 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

(63) "Staff" means paid employees of service provider agencies responsible for providing supports or services to individuals for which payment is made through the Department.

(64) "Support Services" means "support services" as defined in OAR 411-340-0020.

(65) "Supported Employment - Individual Employment Support" means job coaching or job development services to obtain or maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(66) "Supported Employment - Small Group Employment Support" means services and training activities provided in regular business, industry, and community settings for groups of two to eight individuals with disabilities. Supported employment - small group employment support is provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.

(67) "These Rules" mean the rules in OAR chapter 411, division 345.

(68) "Transfer" means movement of an individual from one site to another site administered or operated by the same agency service provider.

(69) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator or personal agent and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(70) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(71) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by an agency service provider.

(72) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0025
Services Provided

(1) The delivery of employment services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.

(2) Employment is the preferred activity for individuals receiving services under these rules. Competitive integrated employment is the highest priority over unemployment, segregated or sheltered employment, supported employment - small group employment support, or non-work day activities.

(3) Consistent with the person-centered approach to these services, individuals accessing employment services under these rules must be encouraged, on an ongoing basis, to explore their interests, strengths, and abilities relating to employment or career advancement.

(4) All employment services have an optimal and expected outcome of sustained paid employment and work experience leading to further career development and competitive integrated employment for which an individual is compensated at or above minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(5) Employment services are provided under these rules in accordance with the State of Oregon Executive Order No. 13-04 and OAR chapter 407, division 025.

(6) Employment services must be evidence-based where evidence-based practices have been identified.

(7) Employment services must be:

(a) Offered to eligible individuals in accordance with OAR 411-345-0140;

(b) Provided to eligible individuals under the authorization of an ISP in accordance with OAR 411-345-0160;

(c) Offered in accordance with these rules when services are provided by a certified provider organization;

(d) Provided in a non-residential setting, unless an individual is operating a home-based business;

(e) Provided in the most integrated employment setting appropriate to the needs of an individual, and consistent with the choice of the individual regarding services, providers, and goals; and

(f) Designed to:

(A) Increase independence, integration, and productivity;

(B) Promote integration into the workforce and workplace;

(C) Promote interaction with people without disabilities; and

(D) Support successful employment outcomes consistent with personal and career goals.

(8) Employment services do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Services, 29 U.S.C. § 701-7961, as amended;

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended; or

(c) Vocational assessments in a sheltered workshop.

(9) Employment services include the following:

(a) SUPPORTED EMPLOYMENT — INDIVIDUAL EMPLOYMENT SUPPORT:

(A) JOB COACHING:

(i) Support to assist an individual to maintain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment. Job coaching does not include support in volunteer work.

(ii) Individuals utilizing this service for jobs obtained prior to December 28, 2014 are optimally compensated at or above the minimum wage. Individuals utilizing this service for jobs obtained after December 28, 2014, must be compensated at or above the minimum wage. Effective July 1, 2015, all jobs that pay below minimum wage must be supported through another employment service available under these rules, including all jobs obtained prior to December 28, 2014.

(iii) Job coaching services must be provided, at minimum, for the number of hours identified in an ISP.

(iv) Support to maintain self-employment requires the following:

(I) Ongoing assistance, counseling, and guidance after a business has been launched.

(II) This service cannot be provided to defray the operational expenses of the business.

(III) The self-employment must yield an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or in similar tasks and who have similar training, experience, and skills.

(IV) Evidence of the self-employment must be documented and reviewed by the service coordinator or personal agent on an annual basis. Documentation may include, but is not limited to, tax records submitted to the Internal Revenue Service and an annual business plan.

(B) JOB DEVELOPMENT:

(i) Support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(ii) The job developed must provide compensation at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for the same or similar work.

(iii) The job developed must meet criteria established in a Career Development Plan.

(iv) Job development may be authorized in the limited circumstances where the service is not available through Vocational Rehabilitation and the Department has approved authorization.

(b) SUPPORTED EMPLOYMENT — SMALL GROUP EMPLOYMENT SUPPORT:

(A) To provide services and training activities in regular business, industry, and community settings.

(B) May be provided in groups of two to eight individuals.

(C) Must be provided in a manner that promotes integration into the work place and interaction with people without disabilities in those work places.

(D) Does not include vocational services provided in a provider owned, operated, or controlled setting, or a facility-based work setting.

(E) This service does not include support in volunteer work.

(F) Individuals utilizing this service for jobs obtained prior to December 28, 2014, are optimally compensated at or above the minimum wage. Individuals utilizing this service for jobs obtained after December 28, 2014, must be compensated at or above the minimum wage. Effective July 1, 2015, a job that pays below minimum wage must be supported through another Employment Service available under these rules, including all jobs obtained prior to December 28, 2014.

(c) DISCOVERY:

(A) A comprehensive and person-centered employment planning support service to better inform an individual seeking competitive integrated employment and develop a Discovery Profile. It includes a series of work or volunteer related activities, completed in integrated employment settings, to inform the individual and the job developer about the strength's, interests, abilities, skills, experiences, and support needs of the individual. Discovery includes analyzing detailed information from novel and past experiences in order to identify the conditions or integrated employment settings in which the individual shall be most successful.

(B) May include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.

(C) Must be completed within a three month period. A three month extension may be authorized if the individual and the services coordinator or personal agent determines there is a legitimate reason. Legitimate reasons may include, but are not limited to:

(i) The individual has a medical event that delayed completing discovery;

(ii) The individual had a medical event that significantly changed his or her strengths, interests, and abilities; or

(iii) An opportunity to participate in particular work trials or volunteer positions may only be scheduled outside of the three month period.

(D) Must have an outcome of a Discovery Profile. The Discovery Profile must meet requirements established by the Department.

(E) Discovery should result in a referral to vocational rehabilitation services.

(d) EMPLOYMENT PATH SERVICES:

(A) To provide learning and work experiences, including volunteer work, where an individual may develop general, non-job-task-specific strengths and skills that contribute to employability in competitive integrated employment settings. Producing goods or services may be incidental to this service but the primary purpose must be to develop general employment skills that may be transferred to an individual integrated job.

(B) Are expected to occur over a defined period of time with specific outcomes to be achieved, as determined by the individual and his or her service and supports planning team through an ongoing person-centered planning process.

(C) Requires that an individual have an employment-related goal in his or her ISP. General habilitation activities accessed through employment path services must be designed to support such employment goals.

(D) Employment path services are a facility-based service if delivered at a fixed site operated, owned, or controlled by the service provider and where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(10) Attendant care and skills training must be:

(a) Provided to eligible individuals under the authorization of an ISP; and

(b) Offered in accordance with these rules, when services are provided by an agency service provider.

(11) Attendant care and skills training do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-7961, as amended; or

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(12) Agency service providers operating under these rules may provide one or more of the following services:

(a) ATTENDANT CARE SERVICES:

(A) ADL services that include, but are not limited to:

(i) Basic personal hygiene — providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(ii) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(iii) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(iv) Nutrition - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(v) Delegated nursing tasks

(vi) First aid and handling emergencies — addressing medical incidents related to the conditions of an individual, such as seizure, aspiration, constipation, or dehydration, or responding to the call of the individual for help during an emergent situation or for unscheduled needs requiring immediate response;

(vii) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and

(viii) Observation of the status of an individual and reporting of significant changes to a physician, health care provider, or other appropriate person;

(B) IADL services that include, but are not limited to:

(i) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment — cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(ii) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(iii) Meal preparation and special diets;

(iv) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability — helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions;

(v) Medication and medical equipment assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply;

(vi) Social support in the community around socialization and participation in the community.

(I) Support with socialization — assisting an individual in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(II) Support with community participation — assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(III) Support with communication — assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(C) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (B) of this section.

(i) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(iii) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(iv) "Reassurance" means to offer an individual encouragement and support.

(v) "Redirection" means to divert an individual to another more appropriate activity.

(vi) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(vii) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(b) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(A) Skills training may be applied to the use and care of assistive devices and technologies.

(B) Skills training is authorized when:

(i) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(ii) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(iii) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator or personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(C) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator or personal agent must reassess or redefine the use of skills training with the individual for that particular goal.

(c) Attendant care and skills training are facility-based services if delivered at a fixed site operated, owned, or controlled by the service provider and where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630, & 430.670

Hist.: SPD 14-2011, f. & cert. ef. 7-1-11; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0027
Qualification for Services

(1) To receive employment services, attendant care, or skills training, an individual must:

(a) Be an Oregon resident;

(b) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(c) Meet the level of care as defined in OAR 411-320-0020; and

(d) Have services under these rules authorized in an ISP by the CDDP or Brokerage providing case management services.

(2) To be eligible for employment services, an individual must:

(a) Meet the criteria in section (1) of this rule;

(b) Be eligible for OSIPM;

(c) Be legally eligible to work in the United States; and

(d) Have an employment related goal in their ISP.

(3) Employment services for individuals under the age of 18 years must have Department approval.

(4) To be eligible for attendant care or skills training, an individual must meet the criteria in section (1) of this rule and must:

(a) Be eligible for OHP Plus;

(b) Have an assessed need for attendant care based upon a functional needs assessment; and

(c) Have attendant care or skills training identified as a service in their ISP.

(5) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM.

(a) This includes, but is not limited to, the following assets:

(A) An annuity evaluated according to OAR 461-145-0022;

(B) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(C) A loan evaluated according to OAR 461-145-0330; or

(D) An irrevocable trust evaluated according to OAR 461-145-0540.

(b) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0030
Service Provider Requirements

(1) Providers of employment services must be:

(a) A provider certified under OAR chapter 411, division 323;

(b) A provider certified under OAR chapter 411, division 340; or

(c) A qualified independent provider. Independent providers who are employed by the individual may only provide Individual Employment support – Job Coaching.

(2) EMPLOYMENT SERVICE PROVIDER REQUIREMENTS:

(a) EMPLOYMENT PROFESSIONALS. All employment professionals who provide employment services must:

(A) Provide services designed to support successful employment outcomes consistent with the personal and career goals of an individual, including goals identified in the ISP and Career Development Plan for the individual;

(B) Ensure all records are confidential as described in OAR 411-323-0060;

(C) Perform the duties as a mandatory reporter when appropriate and as required by law; and

(D) Have a service agreement or job description with clearly stated job responsibilities. The service agreement must be current, signed by the employment professional, and dated. The service agreement must also include duties specific to the area of specialization, including job coach, job developer, discovery provider, or employment path services provider.

(b) INDEPENDENT PROVIDERS. All qualified independent providers must:

(A) Be at least 18 years of age.

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. Additionally:

(i) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role; and

(ii) The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(C) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275, unless hired or contracted with prior to July 28, 2009, remaining in the current position for which the independent provider was hired.

(D) Be legally eligible to work in the United States;

(E) Not be the spouse of the supported individual;

(F) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(G) Understand requirements of maintaining confidentiality and safeguarding individual information;

(H) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (http://exclusions.oig.hhs.gov/);

(I) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;

(J) Meet the required qualifications for the employment service provided including those required for an employment professional; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) AGENCY SERVICE PROVIDERS.

(A) INSPECTIONS AND INVESTIGATIONS. The agency service provider must allow inspections and investigations as described in OAR 411-323-0040.

(B) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The agency service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(C) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency service provider must maintain written documentation of six hours of pre-service training prior to staff providing services or supports to individuals, including mandatory abuse reporting training, training to work with individuals with developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(D) STAFFING REQUIREMENTS:

(i) Each agency service provider must provide direct service staff appropriate to the number and level of individuals served, to ensure individual rights, basic health, and safety are met;

(ii) Staff must have approval to work based on current Department policy and procedures for background checks in OAR 411-323-0050;

(iii) When individuals are present at an agency site, the service provider must provide and document there are staff trained in the following areas:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(3) EMPLOYMENT PROVIDER QUALIFICATIONS:

(a) EMPLOYMENT PROFESSIONAL. Each employment professional must possess and demonstrate the following qualifications:

(A) Knowledge of developmental disability services;

(B) Knowledge of the rules governing employment services;

(C) Ability to provide skills training for individuals to increase employability;

(D) Ability to support individuals to maintain and be successful in employment; and

(E) Demonstrate by background, education, references, skills, and abilities that the employment professional is capable of safely and adequately performing the tasks to support the ISP and Career Development Plan for an individual, with such demonstration confirmed in writing by the individual, including:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the individual; and

(iv) Training of a nature and type sufficient to ensure that the employment professional has knowledge of emergency procedures specific to the individual receiving services.

(b) JOB DEVELOPERS. A provider of job development services must also possess and demonstrate the following qualifications:

(A) Possess knowledge of best practice methodologies for job development; and

(B) Be able to demonstrate the core competencies of a job developer within one year of employment, including those pertaining to skills assessment, job matching, job customization, job carving, community building, mapping and networking, analyzing labor trends, identifying patterns in job markets, identifying incentives for businesses, and mentoring job seekers.

(c) JOB COACHES. A provider of job coaching services must also possess and demonstrate the following qualifications:

(A) Knowledge of best practice methodologies for job coaching; and

(B) Be able to demonstrate the core competencies of a job coach within one year of employment, including skills to recognize and adapt supports to individual learning styles and needs, conduct task design and accommodations, train instructional and schedule procedures, and collaborate with employee, employer, co-workers, and support team.

(d) DISCOVERY PROVIDER.

(A) A provider of discovery services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for conducting discovery; and

(ii) Be able to demonstrate the core competencies of a discovery provider within one year of employment, including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment portfolio, identify a job seekers' strengths, interests, and talents, and integrate all pertinent information required by the Department into a Discovery Profile.

(B) Effective July 1, 2015, a discovery provider must be qualified as a vendor of Vocational Rehabilitation job placement in order to provide the discovery service.

(e) EMPLOYMENT PATH SERVICE PROVIDERS. A provider of employment path services must also possess and demonstrate the following qualifications:

(A) Knowledge of best practice methodologies for providing employment path services; and

(B) Be able to demonstrate the core competencies of an employment path skills provider within one year of employment, including skills to provide learning and work experiences to teach general, non-job-task-specific strengths and skills.

(4) EMPLOYMENT PROVIDER TRAINING:

(a) Employment professional employed by an agency service provider must complete the following training:

(A) A review of these rules;

(B) CPR and First Aid by a recognized training agency within 90 calendar days of hire;

(C) Six hours of pre-service training including:

(i) Mandatory abuse reporting training;

(ii) Training to work with individuals with developmental disabilities; and

(iii) Training on the employment service and support needs of the individual to whom they will provide support.

(b) An agency service provider must keep documentation of required training in the personnel files of the employment professional.

(c) All employment specialists must complete a competency based employment training as follows:

(A) Job coaches must complete at least one Department approved training for job coaching within 90 days of providing job coaching.

(B) Job developers must complete at least one Department approved training for job developers within 90 days of providing job development.

(C) Discovery providers must complete at least one Department approved training for discovery before being authorized to provide discovery.

(D) Employment path providers must complete at least one Department approved training for employment path providers within 90 days of providing employment path services.

(d) Effective July 1, 2016, agency service providers must have at least one employee who has the Department approved credentialing. Effective

July 1, 2016, providers independently contracted to provide an employment service must have the Department approved credentialing.

(5) DISQUALIFICATION. Employment professionals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The employment professionals must notify the Department or the designee of the Department within 24 hours.

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

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0050
Reciprocal Compliance for Agency Providers

(1) The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment service provider seeking an endorsement based on compliance with other standards must provide the Department with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0085
Reports and Recordkeeping

(1) For each individual supported, service providers being paid for job development services must report activity at least monthly to the services coordinator or personal agent for the individual.

(2) For each individual supported, service providers being paid for discovery services must complete a Discovery Profile and submit the Discovery Profile to the services coordinator or personal agent for the individual.

(3) All documentation required by these rules, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0090
Variances for Agency Providers

(1) The Department may grant a variance to these rules based upon a demonstration by the agency service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

(2) The agency service provider requesting a variance must submit a written application to the CDDP 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) If the variance applies to the services of an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 calendar days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the agency service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(5) The agency service provider may request an administrative review of the denial of a variance. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The agency service provider must send a copy of the written request for an administrative review to the CDDP. The decision of the Director is the final response from the Department.

(6) The duration of the variance is determined by the Department.

(7) The agency service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0040, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0095
Service and Payment Limitations

(1) Effective service rates as authorized in Department payment and reporting systems for individuals enrolled in employment, attendant care, and skills training and paid to providers for delivering services, as described in these rules, shall be based upon the Collective Bargaining Agreement or the agency fee schedule published by the Department.

(2) Only one service may be billed per individual per hour. Payments based on an outcome are not in conflict with payments made based on direct service delivery.

(3) Employment services and payment for employment service are limited to:

(a) An average of 25 hours per week for any combination of job coaching, supported employment - small group employment support, and employment path services; and

(b) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(4) Exceptions to the service and payment limitations may be considered by the Department based upon applicable Department policy.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0110
Individual Rights

(1) An agency service provider must have and implement written policies and procedures that protect the rights of individuals described in subsection (3) of this section and encourage and assist individuals to understand and exercise these rights.

(2) Upon entry and request and annually thereafter, the individual rights described in section (3) of this rule must be provided to an individual and the legal or designated representative of the individual.

(3) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(b) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(c) Individual choice to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the individual;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(i) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

(A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services and a reassessment of service needs;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(4) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(5) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(6) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(7) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0130

Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) An agency service provider must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0140

Entry, Exit, and Transfer Requirements for Agency Service Providers

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) ENTRY. For individuals who receive case management from a CDDP an entry ISP team meeting must be conducted prior to the initiation of employment services, attendant care, or skill training for an individual. This meeting shall be conducted as follows:

(a) Prior to or upon an entry ISP team meeting, an agency service provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device;

(C) A brief written history of any relevant behavioral challenges, including supervision and support needs;

(D) Documentation of any relevant physical limitations that may affect services;

(E) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation

and parole information, or any other relevant legal restrictions on the rights of the individual (if applicable); and

(F) A copy of the most recent ISP (if applicable) and Career Development Plan (if applicable).

(b) The findings of the entry meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual;

(B) The date of the entry meeting;

(C) The date determined to be the date of entry;

(D) Documentation of the participants included in the entry meeting;

(E) Documentation as required by OAR 411-345-0190 and 411-345-0200;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) The written Transition Plan for no longer than 60 calendar days that includes all medical, behavior, and safety supports needed by the individual;

(H) Documentation of the type of services the individual is to receive; and

(I) Documentation of the decision to serve the individual requesting services.

(3) VOLUNTARY TRANSFERS AND EXITS.

(a) An agency service provider must promptly notify a services coordinator or personal agent if an individual gives notice of the intent to exit services or abruptly exits services.

(b) An agency service provider must notify a services coordinator or personal agent prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(4) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) An agency service provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the agency service provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the agency service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. An agency service provider must not reduce services, transfer, or exit an individual involuntarily without 30 calendar days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator or personal agent, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) An agency service provider may give less than 30 calendar days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator or personal agent immediately upon determination of the need for a reduction, transfer, or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS Chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 calendar days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the agency service provider must reserve service availability for the individual until receipt of the Final Order.

(5) EXIT MEETING.

(a) The ISP team for an individual must meet before any decision is made to exit services. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(6) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual from one site to another site before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-047-0065, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0160
Individual Support Plan

(1) An individual has the right to participate in his or her ISP meeting and must be afforded every opportunity to develop and direct his or her ISP and Career Development Plan.

(2) In order to receive employment services, an individual must have an employment related goal in his or her ISP and Career Development Plan.

(3) All individuals utilizing services under these rules must participate in career development planning as a part of the annual ISP.

(4) A Career Development Plan and informal vocational assessment must be developed and implemented with the ISP as follows. The Career Development Plan must:

(a) Focus on the strengths of the individual;

(b) Prioritize employment in integrated settings;

(c) Be based on person-centered planning principles;

(d) Include a current and accurate vocational assessment; and

(e) Be completed with the goal of maximizing the number of hours spent working consistent with the interests, abilities, and choices of the individual.

(5) For services provided by an agency service provider, the ISP and Career Development Plan must be implemented, and a copy of the sections of the ISP and Career Development Plan for each individual that are necessary to deliver the employment services must be available for the employment service provider prior to the start of services and at least annually or as changes occur.

(6) Agency service providers must:

(a) Assign a staff member to participate as a team member in the development of the ISP and Career Development Plan when invited by the individual;

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand the ISP, Career Development Plan, and supporting documents for each individual and to provide individual services; and

(d) Comply with Department rules and policies regarding the ISP and Career Development Plan.

(7) Agency service providers must participate in a face-to-face meeting annually with the ISP team of an individual. An exception is made when:

(a) The individual chooses not to participate in the meeting or the legal representative of the individual objects to the participation of the individual in the face-to face meeting. The individual must receive a copy of the ISP and Career Development Plan related to the necessary delivery of services; or

(b) The individual objects to the participation of an agency service provider during the face-to-face meeting.

(8) In preparation for the ISP meeting, the agency service provider must:

(a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;

(b) Review the current ISP and Career Development Plan of the individual to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP and Career Development Plan; and

(c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week prior to the ISP meeting.

(9) The agency service provider must receive a copy of the ISP and Career Development Plan, or at least portions thereof, related to the necessary delivery of services.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0075, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0170
Behavior Support

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must have and implement a written policy for behavior support utilizing individualized positive support techniques and prohibiting abusive practices.

(2) The agency service provider must inform the individual, and as applicable the legal or designated representative of the individual, of the behavior support policy and any applicable procedures at the time of entry to services and as changes to the behavior policy occur.

(3) Prior to the development of a Behavior Support Plan, the agency service provider must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior that includes (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior that includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) A Behavior Support Plan must include:

(a) An individualized summary of the needs, preferences, and relationships of an individual;

(b) A summary of the functions of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the functions of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan that includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) The agency service provider must maintain the following additional documentation for implementation of Behavior Support Plans:

(a) Written evidence that the individual, the legal or designated representative of the individual (as applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0080, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0180
Protective Physical Intervention for Agency Providers

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the protection of the individual during the time that a medical condition exists.

(2) Staff supporting an individual must be trained and certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying current OIS certification of staff must be maintained in the personnel file for the staff person and be available for review by the Department or the designee of the Department.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the record for the individual.

(4) Use of protective physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(a) Be reviewed by the executive director of the agency service provider or the designee of the executive director within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Be documented as an incident report and submitted to the services coordinator, personal agent, or other Department designee (if applicable) and the legal representative of the individual (if applicable), no later than one business day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances as described in section (8) of this rule. The incident report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review by the executive director of the agency service provider or the designee of the executive director who is knowledgeable in OIS as evident by a job description that reflects this responsibility, which includes the follow-up to be taken to prevent a recurrence of the incident.

(6) The agency service provider must forward a copy of the incident report within five business days of the incident to the services coordinator or personal agent and the legal representative of the individual (if applicable).

(a) The services coordinator, personal agent, or the Department designee (if applicable) must receive a complete copy of the incident report.

(b) A copy of an incident report may not be provided to the legal representative or other agency service provider of an individual when the report is part of an abuse or neglect investigation.

(c) A copy of an incident report provided to the legal representative or other service provider of an individual must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(7) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator, personal agent, or other Department designee (if applicable), within one business day of the incident.

(8) The agency service provider may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others;

(b) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(c) The Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(d) The protective physical intervention techniques and the behaviors for which the protective physical intervention techniques are applied remain within the parameters outlined in the Behavior Support Plan for the individual and the OIS curriculum;

(e) The behavior data collection system for recording observation, intervention, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record items as required in section (5) of this rule; and

(f) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(9) A copy of the behavior data summary must be forwarded every 30 calendar days to the services coordinator, personal agent, or other Department designee (if applicable) and the legal representative of an individual (if applicable).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0085, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0190
Medical Services

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All medical records for the individuals must be kept confidential as described in OAR 411-323-0060.

(2) The agency service provider must have and implement written policies and procedures that describe the medical management system, including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well-being as follows:

(a) The agency service provider must observe the health and physical condition of an individual and take action in a timely manner in response to identified changes in condition that may lead to deterioration or harm;

(b) The agency service provider must assist an individual with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The agency service provider, with the knowledge of the individual, must share information regarding medical conditions with the residential contact (if applicable) and the services coordinator or personal agent of the individual; and

(d) The agency service provider must provide rest and lunch periods at least as required by applicable law unless the needs of the individual dictate additional time.

(4) The agency service provider must maintain records on each individual to aid physicians, health care providers, and the agency service provider in understanding the medical history and current treatment program for the individual. These records must be kept current and organized in a manner that permits a staff and health care provider to easily follow the course of treatment for the individual. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the current medical condition of the individual, including:

(A) A copy of all current orders for medication administered and maintained at the site of the agency service provider;

(B) A list of all current medications; and

(C) A record of visits to health care providers if facilitated or provided by the agency service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the agency service provider must:

(a) Obtain a copy of a written order signed by a physician, designee of a physician, or health care provider prescribing the medication, treatment, special diet, equipment, or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician or health care provider, as specified per the written order of a physician or health care provider;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication, including the prescribed dosage and frequency of administration as contained on the order of the physician or health care provider and medication;

(c) For topical medications and basic first aid treatments utilized without the order of a physician or health care provider, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the executive director of the agency service provider or the designee of the executive director.

(9) Safeguards to prevent adverse medication reactions must be utilized to include:

(a) Maintaining information about the effects and side-effects of each prescribed medication;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact (if applicable) and the services coordinator or personal agent; and

(c) Prohibiting the use of the medications of one individual by another individual.

(10) The service site or agency service provider may not keep unused, discontinued, outdated, or recalled medication, or medication containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled medication or medication containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom the medication was prescribed. The agency service provider must maintain a written record of all disposed medications that includes:

(a) Date of disposal;

(b) A description of the medication, including amount;

(c) The name of the individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication while receiving services from an agency service provider, the agency service provider must:

(a) Have documentation that a training program was initiated with approval of the ISP team for the individual or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the residence of the individual;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) The agency service provider must ensure that individuals able to self-administer medications keep the medications secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The agency service provider must immediately contact the services coordinator or personal agent when the medical, behavioral, or physical needs of an individual change to a point that the needs of the individual may not be met by the agency service provider. The ISP team may determine alternative service providers or may arrange other services if necessary.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0200
Individual Summary Sheets and Emergency Information for Agency Providers

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must maintain a current one to two page summary sheet record at the primary place of business of the agency service provider for each individual receiving services. The record must include:

(a) The name of the individual and his or her current address, telephone number, date of entry into services, date of birth, gender, preferred hospital, medical prime and private insurance number (if applicable), and guardianship status; and

(b) The name, address, and telephone number of:

(A) The legal or designated representative, family, and other significant person of the individual (as applicable);

(B) The primary care provider and clinic preferred by the individual;

(C) The dentist preferred by the individual;

(D) The services coordinator or personal agent of the individual; and

(E) Other agencies and representatives providing services and supports to the individual.

(2) An agency service provider must maintain emergency information for each individual receiving supports and services from the agency service provider in addition to an individual summary sheet identified in section (1) of this rule. The emergency information must be kept current and must include:

(a) The name of the individual;

(b) The name, address, and telephone number of the agency service provider;

(c) The address and telephone number of the residence where the individual lives;

(d) The physical description of the individual, which may include a picture and the date the picture was taken, and identification of:

(A) The race, gender, height, weight range, hair, and eye color of the individual; and

(B) Any other identifying characteristics that may assist in identifying the individual may the need arise, such as marks or scars, tattoos, or body piercing.

(e) Information on the abilities and characteristics of the individual, including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The health support needs of the individual, including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health-related needs.

(g) The emotional and behavioral support needs of the individual, including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The supervision requirements of the individual and why; and

(j) Any additional pertinent information the agency service provider has that may assist in the care and support of the individual in the event of a natural or man-made disaster.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0095, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0230
Incident Reports and Emergency Notifications by Agency Providers

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) A written incident report describing any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the record for the individual. The incident report must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression, or unusual incident.

(2) Copies of incident reports for all unusual incidents (as defined by OAR 411-345-0020) must be sent to the services coordinator or personal agent within five business days of the unusual incident.

(3) The agency service provider must immediately notify the CDDP or Brokerage of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) In the case of an unusual incident requiring emergency response, the agency service provider must immediately notify:

(a) The legal representative, parent, next of kin, designated representative, and other significant person of the individual (as applicable);

(b) The CDDP or Brokerage;

(c) The residential contact of the individual; and

(d) Any other agency responsible for the individual.

(5) In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the agency service provider must immediately notify:

(a) The designated representative of the individual (if applicable);

(b) The legal representative of the individual or nearest responsible relative (as applicable);

(c) The residential contact of the individual;

(d) The local police department; and

(e) The CDDP or Brokerage.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0110, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0240
Emergency Plan and Safety Review for Agency Providers

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) An agency service provider must develop, keep current, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster. The emergency plan must:

(a) Be practiced at least annually;

(b) Consider the needs of the individuals being supported and address all natural and human-caused events identified as a potential significant risk to the individuals, such as a pandemic or an earthquake;

(c) Coordinate with each residential provider or residential contact to address the possibility of emergency or disaster resulting in the following:

(A) Extended utility outage;

(B) No running water;

(C) Inability to provide food or supplies; and

(D) Staff unable to report as scheduled.

(d) Include provisions for evacuation and relocation that identifies:

(A) The duties of staff during evacuation, transport, and housing of individuals;

(B) The requirement for staff to notify the Department and the local CDDP and Brokerage offices of the plan to evacuate or the evacuation of the facility, as soon as the emergency or disaster reasonably allows;

(C) The method and source of transportation;

(D) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals;

(E) A method that provides a person unknown to the individual the ability to identify the individual by name and to identify the name of the agency service provider for the individual; and

(F) A method for tracking and reporting to the Department, local CDDP and Brokerage offices, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(e) Address the needs of the individual, including medical needs; and

(f) Be submitted to the Department as a summary, per Department format, at least annually and upon revision and change of ownership.

(2) An agency service provider must post the following emergency telephone numbers in close proximity to all phones used by staff:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the executive director of the agency service provider and additional people to be contacted in the case of an emergency.

(3) If an individual regularly accesses the community independently, the agency service provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(4) A documented safety review must be conducted quarterly to ensure the service site is free of hazards. The agency service provider must keep the quarterly safety review reports for five years and must make them available upon request by the CDDP, Brokerage, or the Department.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0115, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0250
Evacuation

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must train all individuals immediately upon entry to each service site to leave the site in response to an alarm or other emergency signal.

(2) The agency service provider must document the level of assistance needed by each individual to safely evacuate and such documentation must be maintained in the entry records for the individual.

(3) The agency service provider must provide, or assure provision of, necessary adaptations or accommodations to ensure evacuation safety for individuals with sensory and physically impairments.

(4) Site-based agency service providers must:

(a) Conduct unannounced evacuation drills one per quarter each year when individuals are present, unless required more often by the Oregon Occupational Safety and Health Division.

(A) Drills must occur at different times of the day.

(B) Routes to leave the site for the drill must vary based on the location of a simulated emergency.

(C) Any individual failing to evacuate the service site unassisted within three minutes, or an amount of time set by the local fire authority for the site, must be provided specialized training and support in evacuation procedures.

(b) Make written documentation at the time of each drill and keep the documentation for at least two years following the drill. Documentation must include:

(A) The date and time of the drill;

(B) The location of the simulated emergency and route of evacuation;

(C) The last names of all individuals and staff present in the service area at the time of the drill;

(D) The type of evacuation assistance provided by staff to individuals that need more than three minutes to evacuate as specified in the safety plan for the individuals;

(E) The amount of time required by each individual to evacuate if the individual needs more than three minutes to evacuate;

(F) The amount of time for all individuals to evacuate exclusive of individuals with specialized support as described in section (3)(c) of this rule; and

(G) The signature of the staff conducting the drill.

(c) Develop a written safety plan for individuals who are unable to evacuate the site within the required evacuation time or who, with concurrence of the ISP team, request not to participate in evacuation drills. The safety plan must include:

(A) Documentation of the risk to the medical, physical condition, and behavioral status of the individual;

(B) Identification of how the individual must evacuate the site, including level of support needed;

(C) The routes to be used to evacuate the individual to a point of safety;

(D) Identification of assistive devices required for evacuation;

(E) The frequency the plan must be practiced and reviewed by the individual and staff;

(F) The alternative practices;

(G) Approval of the plan by the legal representative of the individual, services coordinator or personal agent, and the executive director of the agency service provider; and

(H) A plan to encourage future participation in evacuation drills.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0120, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0260
Physical Environment

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All agency service providers must ensure that the service site has no known health or safety hazards in its immediate environment and that individuals are trained to avoid recognizable hazards.

(2) The agency service provider must:

(a) Assure that at least once every five years a health and safety inspection is conducted of owned, leased, or rented buildings and property.

(A) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(B) The inspection may be performed by:

(i) Oregon Occupational Safety and Health Division;

(ii) The workers compensation insurance carrier of the agency service provider;

(iii) An appropriate expert, such as a licensed safety engineer or consultant approved by the Department; or

(iv) The Oregon Public Health Division, when necessary.

(C) The inspection must cover:

(i) Hazardous material handling and storage;

(ii) Machinery and equipment used by the agency service provider;

(iii) Safety equipment;

(iv) Physical environment; and

(v) Food handling, when necessary.

(D) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the agency service provider for five years.

(b) Ensure buildings and property at each owned, leased, or rented service site has annual fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken must be kept by the agency service provider for five years.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0125, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

411-345-0270
Vehicles and Drivers

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR 411-323:

(1) An agency service provider that owns or operates vehicles that transports individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with the laws of the Driver and Motor Vehicle Services Division;

(c) Maintain insurance coverage; and

(d) Carry a first-aid kit in the vehicles.

(2) A driver operating vehicles to transport individuals must meet all applicable requirements of the Driver and Motor Vehicle Services Division.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0130, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Foster Homes for Children with Intellectual or Developmental Disabilities
Adm. Order No.: APD 46-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Amended: 411-346-0110, 411-346-0150, 411-346-0180, 411-346-0190, 411-346-0210
Rules Repealed: 411-346-0110(T), 411-346-0150(T), 411-346-0180(T), 411-346-0190(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities (CFH).

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

Include portability of background check approval to allow alternate caregivers, employees of foster providers, and volunteers to have approval to work in multiple foster homes within a county when working in the same employment role at each foster home;

Incorporate the hearing process for provider notices of involuntary reductions, transfers, and exits adopted in OAR 411-318-0030;

Clarify nursing services to provide consistency with the rules for community nursing services in OAR chapter 411, division 048;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-346-0110
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 346:

(1) "Abuse" means:

(a) "Abuse" as defined in ORS 419B.005 for a child less than 18 years of age; and

(b) "Abuse" as defined in OAR 407-045-0260 when a young adult between the ages of 18 and 21 resides in a certified child foster home.

(2) "Alternate Caregiver" means any person 18 years of age and older responsible for the care or supervision of a child in foster care.

(3) "Alternative Educational Plan" means any school plan that does not occur within the physical school setting.

(4) "Appeal" means the process for a contested hearing under ORS chapter 183 that a foster provider may use to petition the suspension, denial, non-renewal, or revocation of their certificate or application.

(5) "Applicant" means a person who wants to become a child foster provider, lives at the residence where a child in foster care is to live, and is applying for a child foster home certificate or is renewing a child foster home certificate.

(6) "Aversive Stimuli" means the use of any natural or chemical product to alter the behavior of a child, such as the use of hot sauce or soap in the mouth and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Behavior Support" means the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of a child that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and provides cognitive supports to mitigate behavior. Behavior supports are provided in the home or community.

(9) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a foster provider to follow to cause the challenging behaviors of a child to become unnecessary and to change the behavior of the provider, adjust environment, and teach new skills.

(10) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the family of the child developed by the family and the Children, Adults, and Families Division of the Department for promotion of the safety, permanency, and well-being of the child.

(11) "Case Worker" means an employee of the Children, Adults, and Families Division of the Department.

(12) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(13) "Certificate" means a document issued by the Department that notes approval to operate a child foster home for a period not to exceed two years.

(14) "Certifying Agency" means the Department, CDDP, or an agency approved by the Department who is authorized to gather required documentation to issue or maintain a child foster home certificate.

(15) "Child" means:

(a) An individual who is less than 18 years of age who has a provisional determination of an intellectual or developmental disability by the CDDP; or

(b) A young adult age 18 through 21 with an intellectual or developmental disability who is remaining in the same foster home for the purpose of completing their IEP based on the recommendation of the ISP team and an approved certification variance.

(16) "Child Foster Home" means a home certified by the Department that is maintained and lived in by the person named on the foster home certificate.

(17) "Child Foster Home Contract" means an agreement between a foster provider and the Department that describes the responsibility of the foster provider and the Department.

(18) "Child Placing Agency" means the Department, CDDP, or the OYA.

(19) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.

(20) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of a child. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 48 and the Oregon State Board of Nursing rules in OAR chapter 851.

(21) "Delegation" means that a registered nurse authorizes a foster provider or alternate caregiver to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 47.

(22) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a child foster home because the certifying agency has determined that the home or the applicant is not in compliance with one or more of these rules.

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

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(25) "DHS-CW" means the child welfare program area within the Children, Adults, and Families Division of the Department.

(26) "Direct Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for the foster provider or alternate caregivers.

(27) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(28) "Discipline" means "behavior support" as defined in this rule.

(29) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(30) "Educational Surrogate" means the person who acts in place of a parent in safeguarding the rights of a child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

(31) "Emergency Certificate" means a foster home certificate issued for 30 days.

(32) "Entry" means admission to a Department-funded developmental disability service.

(33) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(34) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.

(35) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. A foster provider is considered a private agency for purposes of mandatory reporting of abuse.

(36) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child residing in a foster home is known as the Support Needs Assessment Profile (SNAP).

(37) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child in foster care.

(38) "Home Inspection" means the on-site, physical review of the home of an applicant to assure the applicant meets all health and safety requirements within these rules.

(39) "Home Study" means the assessment process used for the purpose of determining the ability of an applicant to care for a child in need of foster care placement.

(40) "ICWA" means the Indian Child Welfare Act.

(41) "IEP" means "Individualized Education Plan". An IEP is a written plan of instructional goals and objectives developed in conference with a teacher, student, the guardian of the student, and a representative of the school district.

(42) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child in foster care.

(43) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(44) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(45) "Involuntary Reduction" means a foster provider has made the decision to reduce services provided to a child and the child or the parent or guardian of the child has not given prior approval.

(46) "Involuntary Transfer" means a foster provider has made the decision to transfer a child and the child or the parent or guardian of the child has not given prior approval.

(47) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the child. The ISP reflects the services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, Community First Choice state plan, natural supports, or alternative resources.

(48) "ISP Team" means a team composed of the child in foster care (when appropriate) and the parent or guardian of the child, CDDP services coordinator, and others chosen by the child or the parent or guardian of the child, such as the foster provider or family members of the child.

(49) "Licensed Medical Professional" means a person who meets the following:

(a) Holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician's assistant licensed to practice in Oregon; and

(b) Whose training, experience, and competence demonstrate expertise in children's mental health and the ability to conduct a mental health assessment and provide psychotropic medication management for a child in foster care.

(50) "MAR" means medication administration record.

(51) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body that cannot be

easily removed or easily negotiated around that restricts freedom of movement or access to the body.

(52) "Member of the Household" means any adult or child living in the home, including an employee or volunteer assisting in the care provided to a child placed in the home. A child in foster care is not considered a member of the household.

(53) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing a child and obtaining all pertinent biopsychosocial information as identified by the child, the family of the child, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the child;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(54) "Misuse of Funds" includes, but is not limited to, a foster provider or staff person:

(a) Borrowing from, or loaning money to, a child in foster care;

(b) Witnessing a will in which the foster provider or a staff person is a beneficiary;

(c) Adding the name of the foster provider or staff person to the bank account of a child or other titles for personal property without approval of the child when of age to give legal consent, or the guardian of the child and authorization of the ISP team;

(d) Inappropriately expending or theft of the personal funds of a child;

(e) Using the personal funds of a child for the benefit of the foster provider or staff person; or

(f) Commingling the funds of a child with the funds of the foster provider or the funds of another child.

(55) "Monitoring" means:

(a) The observation of a certified child foster home by the Department or the designee of the Department to determine continuing compliance with these rules; and

(b) The periodic review of the implementation of services and supports identified in an ISP and the quality of services delivered.

(56) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as and any service plans developed by other health professionals.

(57) "Occupant" means any person having official residence in a certified child foster home.

(58) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques used to maintain health and safety.

(59) "OYA" means "Oregon Youth Authority". OYA is the agency that has been given commitment and supervision responsibilities over a youth offender by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(60) "Permanent Foster Care" means the long term contractual agreement between a foster provider and the Children, Adults, and Families Division of the Department, approved by the juvenile court that specifies the responsibilities and authority of the foster provider and the commitment by the permanent foster provider to raise a child until the age of majority or until the court determines that permanent foster care is no longer the appropriate plan for the child.

(61) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(62) "PRN (pro re nata)" means the administration of a medication to a child on an 'as needed' basis.

(63) "Protected Health Information" means any oral or written health information that identifies a child and relates to the past, present, or future physical or mental health condition, health care treatment, or payment for health care treatment.

(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(65) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(66) "Qualified Mental Health Professional" means a licensed medical practitioner or any other meeting the minimum qualifications specified in OAR 309-019-0125.

(67) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to a child in foster care. Relief care may include 24-hour relief care or hourly relief care.

(68) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after the certifying agency has determined that the foster provider or the child foster home is not in compliance with one or more of these rules.

(69) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(70) "Significant Medical Needs" includes, but is not limited to, total assistance required for all activities of daily living, such as access to food or fluids, daily hygiene that is not attributable to the chronological age of a child, and frequent medical interventions required by a Nursing Service Plan or ISP for health and safety of the child.

(71) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of a child and in support of an evidence-based treatment regimen.

(72) "Suspension" means an immediate, temporary withdrawal of the approval to operate a child foster home after the certifying agency determines a foster provider or the child foster home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of a child.

(73) "These Rules" mean the rules in OAR chapter 411, division 346.

(74) "Transfer" means movement of a child from one home to another home administered or operated by the same foster provider.

(75) "Transition Plan" means the ISP describing necessary services and supports for a child upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(76) "Unauthorized Absence" means any length of time when a child is absent from a foster home without prior approval as specified in the ISP for the child.

(77) "Unusual Incident" means any incident involving a child that includes an act of physical aggression, serious illness or an accident, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, death, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(78) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of a child.

(79) "Variance" means the temporary exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the certifying agency.

(80) "Young Adult" means an individual age 18 through 21 who resides in a child foster home.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14

411-346-0150

General Requirements for Certification

(1) An applicant or foster provider must participate in certification and certification renewal studies and in the ongoing monitoring of their home.

(2) An applicant or foster provider must give the information required by the Department to verify compliance with all applicable rules, including

change of address and change of number of people in the household such as relatives, employees, or volunteers.

(3) An applicant seeking certification from the Department must complete the Department application forms. When two or more adults living in the home share foster provider responsibilities to any degree, each adult must be listed on the application as applicant and co-applicant.

(4) An applicant must disclose each state or territory the applicant has lived in the last five years and for a longer period if requested by the certifying agency. The disclosure must include the address, city, state, and zip code of previous residences.

(5) An applicant must provide the following information:

(a) Names and addresses of any agencies in the United States where any occupant of the home has been licensed or certified to provide care to children or adults and the status of such license or certification, such as licenses or certificates for residential care, nurse, nurse's aide, and foster care;

(b) Proposed number, gender, age range, disability, and support needs of children to be served in foster care;

(c) School reports for any child of school age living in the home at the time of initial application. School reports for any child of school age living in the home within the last year may also be required;

(d) Names and addresses of at least four people, three of whom are unrelated, who have known each applicant for two years or more and who can attest to the character of the applicant and the ability of the applicant to care for children. The Department may contact schools, employers, adult children, and other sources as references;

(e) Reports of all criminal charges, arrests, or convictions, including the date of offense and the resolution of those charges, for all employees or volunteers and people living in the home. If the minor children of the applicant are living in the home, the applicant must also list reports of all criminal or juvenile delinquency charges, arrests, or convictions, including the date of offense and the resolution of those charges;

(f) Founded reports of child abuse or substantiated abuse, including dates, locations, and resolutions of those reports, for all people living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(g) Demonstration, upon initial certification, of successful completion of 15 hours of pre-service training.

(h) Demonstration, upon initial certification, of income sufficient to meet the needs and to ensure the stability and financial security of the family independent of the foster care payment;

(i) All child support obligations in any state, including whether the obligor is current with payments or in arrears, and whether any wages of the applicant or foster provider are being attached or garnished for any reason;

(j) A statement from a physician, on a form provided by the Department, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the child in foster care, caregiver, and other occupants of the home;

(B) Windows;

(C) Exit doors;

(D) Smoke alarms and fire extinguishers; and

(E) Wheel chair ramps, if applicable; and

(l) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures, and fencing.

(6) Falsification or omission of any of the information for certification may be grounds for denial or revocation of the child foster home certification.

(7) Applicants must be at least 21 years of age. Applicants who are "Indian" as defined in the ICWA may be 18 years of age or older if an Indian child to be placed is in the legal custody of DHS-CW.

(8) Applicants, foster providers, alternate caregivers, employees of foster providers, volunteers, other occupants in the foster home who are 18 years of age or older, other adults having regular contact in the foster home with a child in foster care, and any subject individual as defined in OAR 407-007-0210 must consent to a background check by the Department in accordance with 407-007-0200 to 407-007-0370 (Background Check Rules) and under ORS 181.534. The Department may require a background check on members of the household less than 18 years of age if there is reason to believe that a member of the household may pose a risk to a child placed in the home. All people subject to a background check are required to complete an Oregon background check and a national background check as described in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) Alternate caregivers, employees of foster providers, and volunteers may be approved to work in multiple homes within a county only when working in the same employment role at each home. The indication of worksite location must be included in the background check request for each alternate caregiver, employee of the foster provider, or volunteer who intends to work at various child foster homes within the licensing jurisdiction of the county.

(b) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a person described in section (8) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(c) A person does not meet qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(d) Section (8)(a) and (b) of this rule do not apply to employees hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(e) Any person as described in section (8) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(9) The Department may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the background check, a fitness determination of "denied".

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography; or

(D) Rape, sexual assault, or homicide.

(c) Has, within the past five years from the date the background check was signed, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Physical assault or battery (other than against a spouse or child); or

(B) Any drug-related offense.

(d) Has been found to have abused or neglected a child or adult as defined in ORS 419B.005 or as listed in OAR 407-045-0260.

(e) Has, within the past five years from the date the child foster home application was signed, been found to have abused or neglected a child or adult in the United States as defined by that jurisdiction or any other jurisdiction.

(10) An applicant or foster provider may request to withdraw an application any time during the certification process by notifying the certifying agency in writing. Written documentation by the certifying agency of oral notice may substitute for written notification.

(11) The Department may suspend or revoke a certificate or may not issue or renew a certificate for a minimum of five years, if an applicant is found to have a license or certificate to provide care to children or adults suspended, revoked, or not renewed by other than voluntary request.

(12) The Department may not issue or renew a certificate based on an evaluation of any negative references, school reports, statement of a physician, or previous licensing or certification reports from other agencies or states.

(13) A Department employee may be a foster provider, or an employee of an agency that contracts with the Department as a foster provider, if the position of the employee with the Department does not influence referral, regulation, or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from the Director of the Department. The written approval must be on file with the Director of the Department and in the certification file maintained by the Department.

(14) An application is incomplete and void unless all supporting materials are submitted to the Department within 90 days from the date of the application.

(15) An application may not be considered complete until all required information is received and verified by the Department. A decision to approve or deny certification is made by the Department within 60 days from the receipt of the completed application.

(16) Compliance with these rules is determined by the Department based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study,

and a personal interview with the provider. A certificate issued on or after February 1, 2010 is valid for a maximum of two years unless revoked or suspended.

(17) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to a certificate that limits a foster provider to the care of a specific child. A foster provider with this limitation does not receive referrals.

(19) A child foster home certificate is not transferable or applicable to any location or people other than those specified on the certificate.

(20) A foster provider who cares for a child funded by the Department must enter into a contract with the Department and follow the Department rules governing reimbursement for services and refunds.

(21) A foster provider may not be the parent or legal guardian of any child placed in their home for foster care services funded by the Department.

(22) If an applicant or foster provider intends to provide care for a child with significant medical needs, at least one provider or applicant must have the following:

(a) An equivalent of one year of full-time experience in providing direct care to individuals;

(b) Health care professional qualifications, such as a registered nurse (RN) or licensed practical nurse (LPN), or the equivalent of two additional years full-time experience providing care and support to an individual who has a medical condition that is serious and may be life-threatening;

(c) Copies of all current health related licenses or certificates and provide those documents to the certifying agent;

(d) Current certification in First Aid and Cardiopulmonary Resuscitation (CPR). The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the child served in the foster home;

(e) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the ability of the applicant and past experiences as a caregiver. The medical professional references may serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from the Medically Fragile Children's Unit (MFCU) of the Department if the foster provider or applicant has provided services through the MFCU or if the foster provider or applicant has a child in the family home or foster home that has historically received services through the MFCU.

(23) A foster provider may not accept a child with significant medical needs unless an initial Nursing Service Plan for the child is in place at the time of placement that addresses the health and safety supports for the child.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14

411-346-0180

Professional Responsibilities of the Foster Provider

(1) TRAINING AND DEVELOPMENT.

(a) The foster provider must complete a minimum of 15 hours of pre-service training prior to certification and 10 hours annually for certification renewal. The Department or the certifying agency may require additional hours of training based on the needs of the child served in the home.

(b) The foster provider must participate in training provided or approved by the Department or the certifying agency. Such training must include educational opportunities designed to enhance the awareness, understanding, and skills of the foster provider to meet the special needs of a child placed in the home of the foster provider.

(c) The foster provider must complete mandatory reporter training prior to initial certification and annually thereafter.

(d) Mandatory reporter training must be appropriate to the ages of the individuals living in the child foster home.

(2) RELATIONSHIP WITH THE CHILD PLACING AGENCY. The foster provider must:

(a) Take part in planning, preparation, pre-placement activities, and visitation for the child placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP services coordinator for the child placed in their home;

(c) In advance or within one business day, notify the certifying agency of changes likely to affect the life and circumstances of the foster family or the safety in the home including, but not limited to, the following:

(A) Foster family illness;

(B) Divorce, legal separation, or loss of a household member;

(C) Significant change in financial circumstances;

(D) New household members or placement of a child in foster care by another agency, including relief care;

(E) Arrests or criminal involvement;

(F) The addition of hunting equipment and weapons;

(G) The addition of a swimming pool; or

(H) The addition of a pet.

(d) Immediately notify the CDDP services coordinator and guardian of an injury, illness, or accident of the child or any unusual incident or circumstance involving the child that may have a serious effect on the health, safety, physical, or emotional well-being of the child in foster care;

(e) Notify the guardian and CDDP staff of any unauthorized absence of a child in foster care within 12 hours or other mutually agreed upon time as determined by the ISP team;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract;

(g) Allow the certifying agency and child placing agency reasonable access to the child foster home and to the child placed in the care of the foster provider. Allow family members of the child reasonable access to the child foster home and the child when placement is voluntary. For the purpose of these rules, reasonable access means with advance notice unless there is cause for not giving such notice;

(h) Allow the Department or certifying agency staff access to:

(A) Investigate reports of abuse and violations of a regulation or provision of these rules;

(B) Inspect or examine the home, the records and accounts of a child, and the physical premises including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult, or alternate caregivers.

(i) Participate in interviews conducted by the Department or the certifying agency; and

(j) Authorize substitute caregivers to permit entrance by the Department or the certifying agency for the purpose of inspection and investigation.

(3) ACCEPTING CHILDREN FOR CARE.

(a) Except as described in section (3)(c) of this rule, a certified provider may not exceed the following maximum number of children in the foster home including the biological children of the provider:

(A) A total of four children when one certified adult lives in the home; or

(B) A total of seven children when two certified adults live in the home.

(b) All homes are limited to two children under the age of three.

(c) Any providers certified prior to July 1, 2007 with a capacity greater than the numbers listed in section (3)(a) of this rule must meet the standard through attrition as children move out of the foster home.

(d) At the time of referral, the foster provider must be given available information about the child including behavior, skill level, medical status, and other relevant information. The foster provider is obligated to decline the referral of any child based on the referral information, parameters of the certification of the child foster home, or if the provider feels his or her skill level may not safely or effectively support the child.

(e) A foster provider may provide relief care in the child foster home for a child upon approval by the certifying agency or the Department.

(f) A foster provider must obtain approval from the certifying agency prior to accepting a child for placement.

(g) A child who turns 18 may continue to reside in their current certified child foster home when the ISP team determines it is in the best interest of the child to remain in their current certified child foster home. When the ISP team determines a child who is turning 18 may remain in their current certified child foster home, the foster provider must:

(A) Submit a variance request to the Department in accordance with OAR 411-346-0210; and

(B) Submit to the Department and the certifying agency, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the child to remain in the current certified child foster home.

(h) Any variance to subsections (3)(a) through (3)(h) of this section must take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adults to children;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and

(G) The desirability of keeping siblings placed together.

(i) The foster provider may not care for unrelated adults on a commercial basis in the child foster home or accept children for day care in the child foster home while currently certified as a foster provider.

(j) The foster provider must notify the Department prior to a voluntary closure of a child foster home and give the parent or guardian of the child and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of the child or foster provider.

(4) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A foster provider must only reduce, transfer, or exit a child involuntarily for one or more of the following reasons:

(A) The behavior of the child poses an imminent risk of danger to self or others;

(B) The child experiences a medical emergency;

(C) The service needs of the child exceed the ability of the foster provider;

(D) Failure to pay for services; or

(E) The certification for the child foster home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A foster provider must not reduce services, transfer, or exit a child involuntarily without 30 days advance written notice to the parent or guardian of the child and the CDDP services coordinator, except in the case of a medical emergency or when a child is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right to a hearing as described in subsection (e) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when the parent or guardian of a child requests the reduction, transfer, or exit.

(c) A foster provider may give less than 30 days advance written notice only in a medical emergency or when a child is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the parent or guardian of the child and the CDDP services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) A foster provider is responsible for the provision of services until a child exits the home.

(e) HEARING RIGHTS. A child and the parent or guardian of a child must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If a child or the parent or guardian of a child requests a hearing, the child must receive the same services until the hearing is resolved. When a child has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the child or the parent or guardian of the child has requested a hearing, the foster provider must reserve the room of the child until receipt of the final order.

(5) RELATIONSHIP WITH THE FAMILY OF A CHILD. In accordance with the ISP for a child and the guardian of the child, the foster provider must:

(a) Support the relationship of the child with family members, including siblings;

(b) Assist the CDDP staff and the guardian in planning visits with the child and the family members of the child; and

(c) Provide the child reasonable opportunities to communicate with his or her family members.

(6) CONFIDENTIALITY.

(a) The foster provider and the family of the foster provider must treat personal information about a child or the family of a child in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, certifying agency staff, CDDP staff, DHS-CW child protective services staff, DHS-CW case workers, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety, and service needs of the child.

(b) In addition to the requirements in subsection (6)(a) of this section, the foster provider and the family of the foster provider must comply with the provisions of ORS 192.553 to 192.568 and therefore may use or disclose the protected health information of a child only:

(A) To law enforcement, certifying agency staff, CDDP staff, and DHS-CW staff;

(B) As authorized by the personal representative or guardian of the child appointed under ORS 125.305, 419B.372, 419C.481, or 419C.555;

(C) For purposes of obtaining health care treatment for the child;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(c) The foster provider must keep all written records for each child in a manner that ensures their confidentiality.

(7) MANDATORY REPORTING.

(a) The foster provider and the employees and volunteers of the foster provider are mandatory reporters of suspected abuse of any child as defined by ORS 419B.005. Upon reasonable cause to believe that abuse has occurred, all adult members of the household and any foster provider, employees, independent contractors, or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) When the certified child foster provider, employees of the foster provider, independent contractors, or volunteers are providing services to an individual 18 years or older and have reason to believe abuse as defined in OAR 407-045-0260 has occurred, the foster provider, employees of the foster provider, independent contractors, or volunteers must report the pertinent information to the CDDP or law enforcement in accordance with ORS 430.737.

(c) Any protective physical intervention that results in an injury to the child, as defined in ORS 419B.005, must be reported to DHS-CW and the CDDP services coordinator by the foster provider. Same day oral notification is required.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14

411-346-0190
Standards and Practices for Care and Services

(1) The foster provider must:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual, and emotional development of the child in the child foster home;

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books, appropriate to the chronological age, culture, and developmental level of the child;

(c) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), encourage the child to participate in community activities with family, friends, and on his or her own when appropriate;

(d) Promote the independence and self-sufficiency of the child by encouraging and assisting the child to develop new skills and perform age-appropriate tasks;

(e) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), ask the child in foster care to participate in household chores appropriate to the age and ability of the child that are commensurate with household chores expected of the children of the foster provider;

(f) Provide the child with reasonable access to a telephone and to writing materials;

(g) In accordance with the ISP and as defined in the DHS-CW Case Plan (if applicable), permit and encourage the child to have visits with family and friends;

(h) Allow regular contacts and private visits or phone calls with the CDDP services coordinator and the DHS-CW case worker (if applicable); and

(i) Not allow a child in foster care to baby-sit in the child foster home or elsewhere without permission of the CDDP services coordinator and the guardian.

(2) RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.

(a) The foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity, and language of a child and the family of a child.

(b) In accordance with the ISP and the preferences of the guardian of the child, the foster provider must participate with the ISP team to arrange

transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the foster provider.

(c) The foster provider may not require a child to participate in religious activities or ethnic events contrary to the beliefs of the child.

(3) PUBLIC EDUCATION. The foster provider:

(a) Must enroll each child of school age in public school within five school days of the placement and arrange for transportation;

(b) Must comply with any Alternative Educational Plan described in the IEP for the child;

(c) Must be actively involved in the school program for the child and must participate in the development of the IEP. The foster provider may apply to be the educational surrogate of the child if requested by the parent or guardian of the child;

(d) Must consult with school personnel when there are issues with the child in school and report to the guardian and CDDP services coordinator any serious situations that may require Department involvement;

(e) Must support the child in his or her school or educational placement;

(f) Must assure the child regularly attends school or educational placement and monitor the educational progress of the child; and

(g) May sign consent to the following school related activities:

(A) School field trips within the state of Oregon;

(B) Routine social events;

(C) Sporting events;

(D) Cultural events; and

(E) School pictures for personal use only unless prohibited by the court or legal guardian.

(4) ALTERNATE CAREGIVERS.

(a) The foster provider must arrange for safe and responsible alternate care.

(b) A child care plan for a child in foster care must be approved by the Department, the CDDP, or DHS-CW before it is implemented. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280) or be a certified foster provider.

(c) The foster provider must have a Relief Care Plan approved by the certifying agency or the Department when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants, and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules;

(E) Cleared by a background check as described in OAR 411-346-0150, including a DHS-CW background check;

(F) Able to communicate with the child, individuals, agencies providing care to the child, the CDDP services coordinator, and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the ISP, Behavior Support Plan, and any related protocols for the child;

(I) Able to provide the care needed for the child;

(J) Trained on the required documentation for health, safety, and behavioral needs of the child;

(K) A licensed driver and vehicle insurance in compliance with the laws of the Driver and Motor Vehicle Services Division when transporting children by motorized vehicle;

(L) Not be a person who requires care in a foster care or group home; and

(M) Not be the parent or guardian of the child.

(e) When the foster provider uses an alternate caregiver and the child is staying at the home of the alternate caregiver, the foster provider must assure the home of the alternate caregiver meets the necessary health, safety, and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider must assure that the person is responsible and capable of assuming child care responsibilities and is present at all times. The foster provider still maintains primary responsibility for the child.

(5) FOOD AND NUTRITION.

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community.

(A) Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a licensed medical professional or qualified health care provider.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Consideration must be given to cultural and ethnic background in food preparation.

(b) Any home canned food used must be processed according to the guidelines of Oregon State University extension services (http://extension.oregonstate.edu/fch/food-preservation).

(c) All food items must be used prior to the expiration date.

(d) The foster provider must implement special diets only as prescribed in writing by a licensed medical professional or qualified health care provider.

(e) The foster provider must prepare and serve meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(f) When serving milk, the foster provider must only use pasteurized liquid or powdered milk for consumption by a child in foster care.

(g) A child who must be bottle-fed and cannot hold the bottle, or is 11 months or younger, must be held during bottle-feeding.

(6) CLOTHING AND PERSONAL BELONGINGS.

(a) The foster provider must assure that each child has his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) A school-age child must participate in choosing his or her own clothing whenever possible.

(c) The foster provider must allow a child to bring and acquire appropriate personal belongings.

(d) The foster provider must assure that when a child leaves the child foster home the belongings of the child, including all personal funds, medications, and personal items, remain with the child. This includes all items brought with the child and obtained while living in the child foster home.

(7) BEHAVIOR SUPPORT AND DISCIPLINE PRACTICES.

(a) The foster provider must teach and discipline a child with respect, kindness, and understanding, using positive behavioral theory and practice. Unacceptable practices include, but are not limited to:

(A) Physical force, spanking, or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or the family of the child that undermine the self-respect of the child;

(C) Denial of food, clothing, or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or the DHS-CW case plan (if applicable);

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of protective physical intervention;

(G) Threatened or unauthorized use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the child foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment; and

(L) Group discipline for misbehavior of one child.

(b) The foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) If time-out separation from others is used to manage behavior, time-out must be included on the ISP for the child and the foster provider must provide time-out in an unlocked, lighted, well-ventilated room of at least 50 square feet.

(A) The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out.

(B) The time limit must take into consideration the chronological age, emotional condition, and developmental level of the child.

(C) Time-out is to be used for short duration and frequency as approved by the ISP team.

(d) No child in foster care or other child in a child foster home is to be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, or threats of harm as defined in ORS 419B.005 and OAR 407-045-0260.

(e) BEHAVIOR SUPPORT PLAN. For a child who has demonstrated a serious threat to self, others, or property and for whom it has been decid-

ed a Behavior Support Plan is needed, the Behavior Support Plan must be developed with the approval of the ISP team.

(f) PROTECTIVE PHYSICAL INTERVENTION. A protective physical intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the ISP team approved Behavior Support Plan.

(i) When protective physical intervention is employed as part of the Behavior Support Plan, the foster provider and alternate caregivers must complete OIS training prior to the implementation of the Behavior Support Plan.

(ii) The use of any modified OIS protective physical intervention must have written approval from the OIS Steering Committee prior to implementation. Documentation of the approval of the OIS Steering Committee must be maintained in the records for the child.

(B) As in a health-related protection prescribed by a physician or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists.

(C) As an emergency measure if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) MECHANICAL RESTRAINT.

(A) The foster provider may not use mechanical restraints on a child in foster care other than car seat belts or normally acceptable infant safety products unless ordered by a physician or health care provider and with the agreement of the ISP team.

(B) The foster provider must maintain the original order of the physician or health care provider in the records for the child and forward a copy to the CDDP services coordinator and guardian.

(h) DOCUMENTATION AND NOTIFICATION OF USE OF PROTECTIVE PHYSICAL INTERVENTION.

(A) The foster provider must document the use of all protective physical interventions or mechanical restraints in an incident report. A copy of the incident report must be provided to the CDDP services coordinator and guardian.

(B) If an approved protective physical intervention is used, the foster provider must send a copy of the incident report within five business days to the CDDP services coordinator and guardian.

(C) If an emergency or non ISP team approved protective physical intervention is used, the foster provider must send a copy of the incident report within 24 hours to the CDDP services coordinator and guardian. The foster provider must make oral notification to the CDDP services coordinator and guardian no later than the next business day.

(D) The original incident report must be on file with the foster provider in the records for the child.

(E) The incident report must include:

(i) The name of the child to whom the protective physical intervention was applied;

(ii) The date, location, type, and duration of entire incident and protective physical intervention;

(iii) The name of the provider and witnesses or people involved in applying the protective physical intervention;

(iv) The name and position of the person notified regarding the use of the protective physical intervention; and

(v) A description of the incident, including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(8) MEDICAL AND DENTAL CARE. The foster provider must:

(a) Provide care and services as appropriate to the chronological age, developmental level, and condition of the child, and as identified in the ISP;

(b) Assure that the orders of a physician, qualified health care provider, or other licensed medical professional are implemented as written;

(c) Inform the physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments, or medications;

(d) Inform the guardian and CDDP services coordinator of any changes in the health status of the child except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the ISP;

(e) Obtain the necessary medical, dental, therapies, and other treatments of care including, but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments; and

(C) Obtaining emergency medical care.

(f) Have prior consent from the guardian of the child for medical treatment that is not routine, including surgery and anesthesia, except in cases where a DHS-CW Permanent Foster Care contract agreement exists;

(g) Keep current medical records. The records must include when applicable:

(A) Any history of physical, emotional, and medical problems, illnesses, and mental health status;

(B) Current orders for all medications, treatments, therapies, use of protective physical intervention, special diets, adaptive equipment, and any known food or medication allergies;

(C) Completed medication administration record (MAR) from previous months;

(D) Pertinent medical and behavioral information, such as hospitalizations, accidents, immunization records, including Hepatitis B status and previous TB tests, and incidents or injuries affecting the health, safety, or emotional well-being of the child;

(E) Documentation or other notations of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(F) Record of medical appointments;

(G) Medical appointment follow-up reports provided to the foster provider; and

(H) Copies of previous mental health assessments, assessment updates including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services.

(h) Provide, when requested, copies of medical records and medication administration records to the legal guardian of the child, CDDP services coordinator, and DHS-CW caseworker; and

(i) Provide copies, as applicable, of the medical records described in subsection (8)(g)(H) of this section to a licensed medical professional prior to a medical appointment or no later than the time of the appointment with the licensed medical professional.

(9) MEDICATIONS AND PHYSICIAN OR QUALIFIED HEALTH CARE PROVIDER ORDERS.

(a) There must be authorization by a physician or qualified health care provider in the file for the child prior to the usage of, or implementation of, any of the following:

(A) All prescription medications;

(B) Nonprescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or special diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of the authorization in the format of a written order signed by a physician or a qualified health care provider; or

(B) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the MAR, including the name of the person giving the order, the date and time, and the name of the person receiving the telephone order; or

(C) A current prescription or label from the manufacturer as specified by the order of a physician on file with the pharmacy.

(c) A provider or alternate caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes may not be made without the authorization of a physician or a qualified health care provider.

(d) Each medication for a child, including refrigerated medication, must be clearly labeled with the label of the pharmacist or in the originally labeled container from the manufacturer and kept in a locked location or stored in a manner that prevents access by children.

(e) Unused, outdated, or recalled medications may not be kept in the child foster home and must be disposed of in a manner that prevents illegal diversion into the possession of people other than for which the medication was prescribed.

(f) The foster provider must keep a MAR for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(g) The MAR must include:

(A) The name of the child in foster care;

(B) A transcription of the written order of the physician or licensed health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) A transcription of the printed instructions from the package for topical medications and treatments without an order from a physician or licensed health care provider;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN medication was administered;

(H) Documented effectiveness of any PRN medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the physical health of the child placed in the foster home.

(h) Any errors in the MAR must be corrected by circling the error and then writing on the back of the MAR what the error was and why.

(i) Treatments, medication, therapies, and special diets must be documented on the MAR when not used or applied according to the order of a physician or licensed health care provider.

(j) SELF-ADMINISTRATION OF MEDICATION. For any child who is self-administering medication, the foster provider must:

(A) Have documentation that a training program was initiated with approval of the ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication, and time of delivery;

(C) Provide for an annual review, at a minimum as part of the ISP process, upon completion of the training program;

(D) Assure that the child is able to handle his or her own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the medical record for the child.

(k) The foster provider may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed health care provider.

(l) Any medication that is used with the intent to alter the behavior of a child must be documented in the ISP for the child.

(m) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the Balancing Test Form (form SDS 4110). Foster providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed as well as any side effects observed.

(n) PRN prescribed psychotropic medication is prohibited.

(o) A mental health assessment by a qualified mental health professional or licensed medical professional must be completed, except as noted in subparagraph (A) of this subsection, prior to the administration of a new medication for more than one psychotropic or any antipsychotic medication to a child in foster care.

(A) A mental health assessment is not required in the following situations:

(i) In a case of urgent medical need;

(ii) For a substitution of a current medication within the same class; or

(iii) A medication order given prior to a medical procedure.

(B) When a mental health assessment is required, the foster provider:

(i) Must notify the DHS-CW caseworker when the child is in legal custody of DHS-CW; or

(ii) Must arrange for a mental health assessment when the child is a voluntary care placement.

(C) The mental health assessment:

(i) Must have been completed within three months prior to the prescription; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Whenever possible, information from the mental health assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(p) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child in foster care, the foster provider must notify:

(A) The CDDP services coordinator; and

(B) The parent of the child when the parent retains legal guardianship or the person who has legal guardianship; or

(C) DHS-CW when DHS-CW is the legal guardian of the child.

(q) The notification from the foster provider to the parent or guardian and the CDDP services coordinator must contain:

(A) The name of the prescribing physician or qualified health care provider;

(B) The name of the medication;

(C) The dosage, any change of dosage, suspension, or discontinuation of the current psychotropic medication;

(D) The dosage administration schedule prescribed; and

(E) The reason the medication was prescribed.

(r) The foster provider must get a written informed consent prior to filling a prescription for any new psychotropic medication except in a case of urgent medical need from DHS-CW when DHS-CW is the legal guardian.

(s) The foster provider must cooperate as requested, when a review of psychotropic medications is indicated.

(10) DIRECT NURSING SERVICES. When direct nursing services are provided to a child, the foster provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the child; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(11) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a foster provider or alternate caregiver;

(F) Teaching and education of the foster provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude direct nursing services.

(c) A Nursing Service Plan must be present when Department funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to the Nursing Service Plan.

(e) When community nursing services are provided to a child, the foster provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the child; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(f) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 -1505 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

(12) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a foster provider or alternate caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(13) CHILD RECORDS.

(a) GENERAL INFORMATION OR SUMMARY RECORD. The provider must maintain a record for each child in the home. The record must include:

(A) The name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status of the child;

(B) The names, addresses, and telephone numbers of the guardian, family, or other significant person of the child;

(C) The name, address, and telephone number of the preferred primary health care provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice of the child;

(D) The name, address, and telephone number of the school program for the child; and

(E) The name, address, and telephone number of the CDDP services coordinator and representatives of other agencies providing services to the child.

(b) EMERGENCY INFORMATION. The foster provider must maintain emergency information for each child receiving foster care services in the child foster home. The emergency information must be kept current and must include:

(A) The name of the child;

(B) The address and telephone number of the child;

(C) The physical description of the child, which may include a picture and the date it was taken, and identification of:

(i) The race, gender, height, weight range, hair, and eye color of the child; and

(ii) Any other identifying characteristics that may assist in identifying the child if the need arises, such as marks or scars, tattoos, or body piercing.

(D) Information on the abilities and characteristics of the child including:

(i) How the child communicates;

(ii) The language the child uses or understands;

(iii) The ability of the child to know how to take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the child to understand what the child may do for him or herself.

(E) The health support needs of the child including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the child;

(iv) Special dietary or nutritional needs such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medications the child is taking that may be an aspiration risk or other risk for the child;

(vi) Additional special requirements the child has related to eating or drinking such as special positional needs or a specific way foods or fluids are given to the child;

(vii) Physical limitations that may affect the ability of the child to communicate, respond to instructions, or follow directions;

(viii) Specialized equipment needed for mobility, positioning, or other health related needs;

(ix) The emotional and behavioral support needs of the child including:

(I) Mental health or behavioral diagnosis and the behaviors displayed by the child; and

(II) Approaches to use when supporting the child to minimize emotional and physical outbursts.

(x) Any court ordered or guardian authorized contacts or limitations;

(xi) The supervision requirements of the child and why; and

(xii) Any additional pertinent information the provider has that may assist in the care and support of the child if a natural or man-made disaster occurs.

(c) EMERGENCY PLANNING. The foster provider must post emergency telephone numbers in close proximity to all phones utilized by the foster provider or alternate caregivers. The posted emergency telephone numbers must include:

(A) Telephone numbers of the local fire, police department, and ambulance service if not served by a 911 emergency services; and

(B) The telephone number of any emergency physician and additional people to be contacted in the case of an emergency.

(d) WRITTEN EMERGENCY PLAN.

(A) Foster providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all children in foster care in the event of an emergency or disaster. The Emergency Plan must:

(i) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the responsibilities of the foster provider and alternative caregiver.

(ii) Consider the needs of the child and address all natural and human-caused events identified as a significant risk for the child foster home such as a pandemic or an earthquake.

(iii) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place when unable to relocate for a minimum of three days under the following conditions:

(I) Extended utility outage;

(II) No running water;

(III) Inability to replace food supplies; and

(IV) An alternate caregiver is unable to provide relief care or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies:

(I) The duties of the alternate caregivers during evacuation, transporting, and housing of the child, including instructions to notify the parent or legal guardian of the child, the Department or the designee of the Department, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the child foster home as soon as the emergency or disaster reasonably allows;

(II) The method and source of transportation;

(III) Planned relocation sites that are reasonably anticipated to meet the needs of the child;

(IV) A method that provides people unknown to the child the ability to identify each child by the name of the child and to identify the name of the supporting provider for the child; and

(V) A method for tracking and reporting to the Department or the designee of the Department and the local CDDP, the physical location of each child in foster care until a different entity resumes responsibility for the child.

(v) Address the needs of the child including provisions to provide:

(I) Immediate and continued access to medical treatment, information necessary to obtain care, treatment, food, and fluids for the child during and after an evacuation and relocation;

(II) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(III) Behavior support needs anticipated during an emergency; and

(IV) The supports needed to meet the life-sustaining and safety needs of the child.

(B) The foster provider must provide and document all training to alternate caregivers regarding the responsibilities of the alternate caregiver for implementing the Emergency Plan.

(C) The foster provider must re-evaluate and revise the Emergency Plan at least annually or when there is a significant change in the child foster home.

(D) The foster provider must complete the Emergency Plan Summary, on the form supplied by the Department, and must send the Emergency Plan Summary to the Department annually and upon change of foster provider or location of the child foster home.

(e) INDIVIDUAL SUPPORT PLAN (ISP). Within 60 days of placement, the ISP for a child must be prepared and updated at least annually.

(A) If requested by the child or guardian, the foster provider must participate with the ISP team in the development and implementation of the ISP to address the behavior, medical, social, financial, safety, and other support needs of the child.

(B) Prior to, or upon entry to, or exit from the child foster home, the foster provider must participate in the development and implementation of a Transition Plan for the child.

(i) The Transition Plan must include a summary of the services necessary to facilitate the adjustment of the child to the child foster home or after care plan; and

(ii) Identify the supports necessary to ensure the health, safety, and any assessments and consultations needed for ISP development.

(f) FINANCIAL RECORDS.

(A) The foster provider must maintain a separate financial record for each child. Errors must be corrected with a single strike through and initialed by the person making the correction. The financial record must include:

(i) The date, amount, and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the foster provider at the beginning of each month;

(iii) The date, amount, and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single transaction over $25 purchased with the personal funds of the child, unless otherwise indicated in the ISP for the child, must be documented in the financial record for the child and include the receipt.

(C) The ISP team may address how the personal spending money of a child is managed.

(D) If the child has a separate commercial bank account, records from the account must be maintained with the financial record for the child.

(E) The personal funds of a child must be maintained in a safe manner and separate from the funds of other members of the household.

(F) Misuse of funds may be cause for suspension, revocation, or denial of renewal of the child foster home certificate.

(g) PERSONAL PROPERTY RECORD.

(A) The foster provider must maintain a written record of the property of a child of monetary value of more than $25 or that has significant personal value to the child, parent, or guardian, or as determined by the ISP team. Errors must be corrected with a single strike through and initialed by the person making the correction.

(B) Personal property records are not required for children who have a court approved Permanent Foster Care contract agreement unless requested by the guardian of the child.

(C) The personal property record must include:

(i) The description and identifying number, if any;

(ii) The date when the child brought in the personal property or made a new purchase;

(iii) The date and reason for the removal from the record; and

(iv) The signature of the person making the entry.

(h) EDUCATIONAL RECORDS. The foster provider must maintain the following educational records when available:

(A) The report cards for the child;

(B) Any reports received from the teacher or the school;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child.

(i) Child records must be available to representatives of the Department, the certifying agency, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian or other legally authorized people.

(j) Child records must be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information must be transferred to the new home of the child.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14

411-346-0210
Variance

(1) The Department may grant a variance to these rules based upon a demonstration by the foster provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of a child or violate state or federal laws.

(2) The foster provider requesting a variance must submit to the certifying agency, a Department variance request form 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) If the variance applies to the services of a child, evidence that the variance is consistent with the currently approved ISP for the child.

(3) The certifying agency must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the certifying agency on the proposed variance.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the foster provider, the certifying agency, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(5) The foster provider may request an administrative review of the denial of a variance request within 30 days from the receipt of the denial by sending a written request for review to the Director and a copy of the request to the certifying agency. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) Granting a variance does not set a precedent that must be followed by the child placing agency when evaluating subsequent requests for variances.

(8) The foster provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0210, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Foster Homes for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: APD 47-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Amended: 411-360-0020, 411-360-0030, 411-360-0130, 411-360-0140, 411-360-0170, 411-360-0190, 411-360-0250, 411-360-0275
Rules Repealed: 411-360-0020(T), 411-360-0140(T), 411-360-0170(T), 411-360-0190(T), 411-360-0250(T), 411-360-0275(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD).

The updated rules:

Make permanent temporary rule language that became effective on July 1, 2014;

Incorporate the general definitions in OAR 411-317-0000, update existing definitions to reflect correct terminology, and include definitions for terms created by the proposed rulemaking;

Clarify nursing services to provide consistency with the rules for community nursing services in OAR chapter 411, division 048;

Incorporate the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan;

Incorporate the rights of individuals adopted in OAR 411-318-0010;

Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300

Implement House Bill 4151 which provides the ability for an AFH-DD provider to immediately exit an individual on parole, probation, or post-release supervision after being convicted of a sex crime;

Reflect new Department terminology and current practice; and

Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-360-0020
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 360:

(1) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by 407-045-0310.

(3) "Adult" means an individual who is18 years or older with an intellectual or developmental disability.

(4) "Adult Foster Home (AFH)" means any family home or facility licensed by the Department in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other

similar living situation that supplies room or board only, if no individual thereof requires any element of care.

(5) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and services to support individuals with intellectual or developmental disabilities.

(6) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by an individual or the legal representative of the individual that provides health care instructions in the event the individual is no longer able to give directions regarding his or her wishes. The Advance Directive gives the individual the means to control his or her own health care in any circumstance. An Advance Directive for Health Care does not include Physician Orders for Life-Sustaining Treatment (POLST).

(7) "Advocate" means a person other than a paid caregiver who has been selected by an individual or the legal representative of the individual to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(8) "AFH" means "adult foster home" as defined in this rule.

(9) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(10) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(11) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

(12) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(13) "Bill of Rights" means civil, legal, or human rights afforded to individuals in an adult foster home that are in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delineated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

(14) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(15) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to:

(a) Provision of 24-hour supervision, being aware of the whereabouts of the individual, and ensuring the health, safety, and welfare of the individual;

(b) Assistance with activities of daily living as defined in OAR 411-317-0000;

(c) Assistance with instrumental activities of daily living as defined in OAR 411-317-0000;

(d) Assistance with quality of life activities, such as socialization and recreation; and

(e) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(16) "Career Development Plan" means the part of an ISP that identifies:

(a) The employment goals and objectives for an individual;

(b) The services and supports needed to achieve those goals;

(c) The people, agencies, and providers assigned to assist the individual to attain those goals;

(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and

(e) The services and supports necessary to overcome those obstacles.

(17) "Caregiver" means any person responsible for providing care and services to support individuals. A caregiver includes a provider, resident manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an adult foster home for individuals with intellectual or developmental disabilities.

(18) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.

(19) "CDDP means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(20) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(21) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(22) "CMS" means "Centers for Medicare and Medicaid Services".

(23) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(24) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP. Compensation does not include the voluntary sharing of expenses between or among roommates.

(25) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction with a provider, the services provided, or the condition of an adult foster home.

(26) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(27) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(28) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(29) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(30) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

(31) "Delegation" is the process by which a registered nurse authorizes a provider, resident manager, or substitute caregiver to perform nursing tasks in selected situations and confirms that authorization in writing. Delegation may only occur after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(32) "Denial" means the refusal of the Department to issue a license to operate an adult foster home for individuals with intellectual or developmental disabilities because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

(33) "Department" means the Department of Human Services or the designee of the Department.

(34) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(35) "Direct Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health-related agency policies and procedures, or providing general training for caregivers.

(36) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(37) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made that renders a home uninhabitable on a temporary, extended, or permanent basis.

(38) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(39) "Enjoin" means to prohibit by judicial order.

(40) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.

(41) "Entry" means admission to a licensed adult foster home for individuals with intellectual or developmental disabilities.

(42) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster

homes that the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions described in ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(43) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(44) "Facility" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(45) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to a person alleged to have engaged in the conduct.

(46) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an individual residing in an adult foster home for individuals with intellectual or developmental disabilities is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx. A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(47) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual. A paid provider for an individual may not be the guardian of the individual.

(48) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.

(49) "Home" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(50) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(51) "House Rules" means the written and posted statements governing house activities in an adult foster home that do not conflict with the Adult Foster Home Bill of Rights.

(52) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(53) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(54) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(55) "Individual" means an adult residing in an adult foster home for individuals with intellectual or developmental disabilities, regardless of source of compensation.

(56) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(57) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(58) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(59) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.

(60) "ISP Team" means a team composed of an individual receiving services and the legal representative of the individual, services coordinator or personal agent, and others chosen by the individual, or as applicable the legal representative of the individual, such as providers or family members.

(61) "Legal Representative" means a person who has the legal authority to act for an individual. The term "legal representative" includes the guardian of an individual, as well as:

(a) For health care decisions, a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or a power of attorney for health care.

(b) For financial decisions, a court-appointed conservator, an agent under a power of attorney, or a representative payee.

(62) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(63) "Licensee" means the person who is issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of an adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is the provider.

(64) "Limited License" means a license is issued to a licensee who intends to provide care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

(65) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(66) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a provider, resident manager, caregiver, or volunteer who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(B) Is a provider, resident manager, caregiver, or volunteer who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(67) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475.300 to 475.346.

(68) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body that cannot be easily removed or easily negotiated around that restricts freedom of movement or access to the body.

(69) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, the family of the individual, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the individual;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(70) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(71) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan and the quality of services delivered by other organizations.

(72) "Natural Supports" mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(73) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(74) "Occupant" means any person residing in or using the facilities of an adult foster home including the individuals, licensee, resident manager, friends, family members, a person receiving day care services, and room and board tenants.

(75) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(76) "OIS" means the "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and nonaversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(77) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meets the eligibility criteria described in OAR chapter 461.

(78) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(79) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(80) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(81) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(82) "Protection" means the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(83) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(84) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include caregivers or the owner or lessor of the building in which an adult foster is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(85) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and care and services for compensation to support a Medicaid eligible individual in an adult foster home.

(86) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-360-0070 and OAR 411-360-0110.

(87) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(88) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(89) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(90) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing care and services to support an individual. Relief care may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

(91) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the visit of the person is for four consecutive weeks or greater.

(92) "Resident Manager" means an employee of a licensee approved by the Department, who resides in an adult foster home and is directly responsible for the care and services to support individuals on a day-to-day basis.

(93) "Respite" means "relief care" as defined in this rule.

(94) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department has determined that the provider is not in compliance with one or more of these rules.

(95) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 68, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

(96) "Self-Preservation" in relation to fire and life safety means the ability of an individual to respond to an alarm without additional cues and reach a point of safety without assistance.

(97) "Services" mean the activities and supports that assist an individual to develop appropriate skills to increase or maintain his or her level of functioning. Services available in the community and arranged for by the provider may include mental health services, rehabilitation services, social services, activities of daily living, medical, dental, other health care services, educational services, financial management services, legal services, vocational services, transportation, and other services required to meet the needs of the individual as described in the ISP for the individual.

(98) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(99) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician or licensed health care provider but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(100) "Subject Individual" means:

(a) Any person 16 years of age or older, including:

(A) A licensed adult foster home provider and provider applicant;

(B) A person intending to work in or currently working in an adult foster home, including but not limited to a substitute caregiver and a potential substitute caregiver in training;

(C) A volunteer if allowed unsupervised access to an individual; and

(D) An occupant, excluding an individual, residing in or on the premises of a proposed or currently licensed adult foster home, including:

(i) A member of the household;

(ii) A room and board tenant; and

(iii) A person visiting for four consecutive weeks or greater.

(b) Subject individual does not apply to:

(A) An individual of the adult foster home or a visitor of an individual;

(B) A person who resides or works in an adult foster home who does not have:

(i) Regular access to the home for meals;

(ii) Regular use of the appliances or facilities of the adult foster home; or

(iii) Unsupervised access to an individual or the personal property of an individual.

(C) A person providing services to an individual that is employed by a private business not regulated by the Department.

(101) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(102) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department that is left in charge of the individuals for any period of time and has access to the individuals' records.

(103) "Support" means the assistance that an individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(104) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(105) "Tenant" means an individual who resides in an adult foster home and receives services, such as meal preparation, laundry, and housekeeping.

(106) "These Rules" mean the rules in OAR chapter 411, division 360.

(107) "Transfer" means movement of an individual from one home to another home administered or operated by the same provider.

(108) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(109) "Unusual Incident" means any incident involving an individual that includes an act of physical aggression, serious illness or an accident, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, death, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(110) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of an individual.

(111) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the provider.

(112) "Young Adult" means a young individual age 18 through 21 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

411-360-0030
Variance

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health, safety, or welfare of the individuals or violate state or federal laws. If the variance applies to the care and services for an individual, the provider must provide evidence that the variance is consistent with the currently approved ISP for the individual.

(2) A variance is granted in writing on a Department-approved form. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider. A variance is specific to a licensed site.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005 f. 1-10-05 cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

411-360-0130
Facility Standards

In order to qualify for or renew a license, an AFH-DD must meet the following provisions.

(1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying the AFH-DD meets applicable local business license, zoning, building, and housing codes, and state and local fire and safety regulations for a single-family residence. General buildings must be of sound construction and meet all applicable state and local fire and safety regulations in effect at the time of construction. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

(b) Mobile homes must have been built since 1976 and designed for use as a home rather than a travel trailer. The mobile home must have the label from the manufacturer permanently affixed to the home that states the mobile home meets the requirements of the Department of Housing and Urban Development (HUD) or authority having jurisdiction.

(c) The building, patios, decks, walkways, and furnishings must be clean and in good repair. The interior and exterior must be well maintained and accessible according to the needs of the individuals. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting, as appropriate. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

(d) Stairways (interior and exterior) must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of the individuals.

(e) Adequate lighting must be provided in each room, internal and external stairways, and internal and external exit ways. Incandescent light bulbs and florescent tubes must be protected and installed per the directions of the manufacturer.

(f) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at a comfortable temperature. Minimum temperatures during the day (when individuals are home) must be no less than 68 degrees F and no less than 60 degrees at night when individuals are sleeping. During times of extreme summer heat, the provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners. The temperature may not exceed 85 degrees in the house.

(g) There must be at least 150 square feet of common space and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or in garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space may be required if wheelchairs are to be accommodated.

(h) Providers must not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the AFH-DD premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(i) Hallways and exit ways must be at least 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(j) Only ambulatory individuals capable of self-preservation may be housed on a second floor or in a basement.

(k) Split level homes must be evaluated according to accessibility, emergency egress, and evacuation capability of the individuals.

(l) Ladders, rope, chain ladders, and other devices may not be used as a secondary means of egress.

(m) Marijuana must not be grown in or on the premises of the AFH-DD. Individuals with Oregon Medical Marijuana Program (OMMP) registry cards must arrange for and obtain their own supply of medical marijuana from a designated grower as authorized by OMMP. The licensed provider, the caregiver, other employee, or any occupant in or on the premises of the AFH-DD must not be designated as the grower for and individual and must not deliver marijuana from the supplier.

(2) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, the water source must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal.

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage, kitchen, and dining area. Special pre-wash attention must be given to soiled and wet bed linens.

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by a licensed veterinarian must be maintained on the premises of the AFH-DD for household pets. Pets not confined in enclosures must be under control and must not present a danger to individuals or guests.

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) All caregivers must take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 to 459.405).

(3) BATHROOMS. Bathrooms must:

(a) Provide for individual privacy and have a finished interior, a mirror, a window capable of being opened or other means of ventilation, and a window covering. No person must have to walk through the bedroom of another person to access a bathroom;

(b) Be clean and free of objectionable odors;

(c) Have tubs or showers, toilets, and sinks in good repair. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and the family of the provider;

(d) Have hot and cold water in sufficient supply to meet the needs of the individuals for personal hygiene. Hot water temperature sources for bathing areas may not exceed 120 degrees F;

(e) Have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Have grab bars for toilets, tubs, and showers for the safety of individuals as required by the disabilities of the individuals;

(g) Have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals in the AFH-DD. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene;

(h) Have adequate supplies of toilet paper for each toilet and soap for each sink; and

(i) Individuals must be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals must be provided with individually dispensed paper towels.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Be finished with walls or partitions of standard construction that go from floor to ceiling and a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated, and lighted with at least one window capable of being opened that meets the fire regulations described in subsection (h) of this section;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet of usable floor space for two individuals; and

(E) Have no more than two persons per room.

(b) Providers, resident managers, or their family members must not sleep in areas designated as common use living areas or share bedrooms with individuals.

(c) There must be a bed for each individual. The bed must include a frame unless otherwise documented by an ISP Team decision. The bed must include a clean and comfortable mattress, a waterproof mattress cover if an individual is incontinent, and a pillow.

(d) Each bedroom must have sufficient, separate, private dresser and closet space for the clothing and personal effects for each individual, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space.

(e) Drapes or shades for windows must be in good condition and allow privacy for individuals.

(f) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(g) Individual bedrooms must be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with an intercom or audio monitor as approved by an ISP team.

(h) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that may be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or the designee of the State Fire Marshal.

(5) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community.

(A) Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by a physician.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations.

(D) Food may not be used as an inducement to control the behavior of an individual.

(b) Menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and the families of the individuals. Menu substitutions in compliance with subsection (a) of this section are acceptable.

(c) MODIFIED OR SPECIAL DIETS. For individuals with modified or special diets ordered by a physician or licensed health care provider, the provider must:

(A) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified or special diets are prepared and served to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(e) Utensils, dishes, glassware, and food supplies must not be stored in bedrooms, bathrooms, or living areas.

(f) Meals must be prepared and served in the AFH-DD where individuals reside. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the

responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

(g) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination.

(h) Food storage and preparation areas and equipment must be clean, free of objectionable odors, and in good repair.

(i) Home-canned foods must be processed according to the guidelines of the Oregon Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(6) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for the use of the individuals for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) Emergency telephone numbers for the local CDDP, police, fire, medical if not served by 911, an emergency number to reach a provider who does not reside in the AFH-DD, and any emergency physician and additional persons to be contacted in the case of an emergency, must be posted in close proximity to all phones utilized by the licensee, resident manager, individuals, and caregivers.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Department, the local CDDP, and Disability Rights Oregon must also be posted.

(d) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day.

(e) AFH-DD telephone numbers must be listed in the local telephone directory.

(f) The licensee must notify the Department, individuals, and as applicable the families, legal representatives, and service coordinators of the individuals of any change in the AFH-DDs telephone number within 24 hours of the change.

(7) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the Office of the State Fire Marshal at the request of the Department using the standards in these rules as appropriate.

(b) Heating in accordance with the specifications of the manufacturer and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair.

(A) Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow the recommended maintenance schedule.

(B) Fireplaces must have protective glass screens or metal mesh curtains attached to the top and bottom of the fireplace.

(C) The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove.

(D) Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring and multi-plug adaptors must not be used in place of permanent wiring. UL-approved, re-locatable power tabs (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPTs must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) All exit doors and interior doors used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have a functional and activated alarm system to alert a caregiver of an unsupervised exit by the individual.

(e) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the instructions of the manufacturer. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(A) Carbon monoxide alarms may be hard wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with battery back-up. Battery operated alarms must be equipped with a device that warns of a low battery.

(B) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(f) SMOKE ALARMS. Smoke alarms must be installed in accordance with the instructions of the manufacturer in each bedroom, hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, laundry rooms, office rooms, and basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(A) Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner.

(B) Smoke alarms must be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired.

(C) Smoke alarms when activated must be audible in all sleeping rooms.

(D) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(g) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed.

(h) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the instructions of the manufacturer at least monthly (per NFPA 72). Testing must be documented in the AFH-DD records.

(i) FIRE EXTINGUISHERS. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements. Fire extinguishers must be inspected at least once a year by a qualified person that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation must be maintained in the AFH-DD records.

(j) The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(8) EMERGENCY PROCEDURES AND PLANNING.

(a) EVACUATION DRILLS.

(A) The provider must conduct unannounced evacuation drills when individuals are present, once every quarter with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire. All occupants must participate in the evacuation drills.

(B) Written documentation must be made at the time of the drill and kept by the provider for at least two years following the drill. Evacuation drill documentation must include:

(i) The date and time of the drill or simulated drill;

(ii) The location of the simulated fire and exit route;

(iii) The last names of all individuals, the provider, caregivers, and all other occupants present on the premises at the time of the drill;

(iv) The type of evacuation assistance provided by the provider to individuals;

(v) The amount of time required by each individual to evacuate; and

(vi) The signature of the provider or caregiver conducting the drill.

(b) The provider must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire and carbon monoxide alarm and how to exit from the AFH-DD in an emergency.

(c) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the Department may apply conditions to the license that include, but are not limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license.

(d) The provider must provide, post, and keep up to date, a floor plan on each floor. The floor plan must contain room sizes, the location of the bed for each individual, windows, exit doors, the sleeping rooms for the

resident manager or provider, smoke and carbon monoxide alarms, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be updated to reflect any change and a copy of the updated floor plan must be submitted to the Department.

(e) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including the basement.

(f) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(g) WRITTEN EMERGENCY PLAN. Providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all the individuals in the event of an emergency or disaster. The Emergency Plan must:

(A) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise;

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the AFH-DD, such as a pandemic or an earthquake;

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for at least three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food supplies; and

(iv) Caregivers unable to report as scheduled.

(D) Include provisions for evacuation and relocation that Identifies:

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department and local CDDP of the plan to evacuate or the evacuation of the AFH-DD as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the AFH-DD;

(iv) A method that provides persons unknown to the individual the ability to identify each individual by name, and to identify the name of the supporting provider for the individual; and

(v) A method for tracking and reporting to the Department and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids for individuals;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(F) Providers must instruct and provide training to all caregivers about the duties and responsibilities of the caregivers for implementing the Emergency Plan.

(i) Documentation of caregiver training must be kept on record by the provider.

(ii) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the AFH-DD.

(G) Applicable parts of the Emergency Plan must coordinate with each applicable employment provider or day program provider to address the possibility of an emergency or disaster during day time hours.

(9) SPECIAL HAZARDS.

(a) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals.

(b) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent cylinders from falling or being knocked over. No smoking signs must be visibly posted where oxygen or other gas cylinders are present. Oxygen and other gas cylinders may not be used or stored in rooms where a wood stove, fireplace, or open flames are located.

(c) To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the AFH-DD. Ammunition must be secured in a locked area separate from the firearms.

(d) For AFH-DDs with one or more employees, smoking regulations in compliance with the Indoor Clean Air Act must be adopted to allow smoking only in outdoor designated areas. Signs must be posted prohibiting smoking in the workplace per OAR 333-015-0040.

(e) Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted. Designated smoking areas must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp. Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.

(f) Cleaning supplies, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, food preparation and storage, dining areas, and medications and in a manner to prevent tampering by individuals.

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

411-360-0140
Standards and Practices for Health Care

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes the health and well-being of the individual as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary licensed health care provider whom the individual or the legal representative of the individual has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a licensed health care provider no less than every two years or as recommended by the licensed health care provider.

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The provider must implement the order of a physician or licensed health care provider.

(f) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the record for the individual.

(2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the Department in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status that may be pertinent to current care and services;

(B) A record of visits and appointments to licensed health care providers that includes documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider;

(C) A record of known hospitalizations and surgeries;

(D) Current signed orders for all medications, treatments, therapies, special diets, and adaptive equipment;

(E) Medication administration records (MARs);

(F) Documentation of the consent from the legal representative of the individual for medical treatment that is not routine including surgery and anesthesia; and

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal guardian, Department caseworker, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications must be:

(a) Kept in the original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; and

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of the physician or licensed health care provider including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For over the counter topical medications without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (as needed) medication was administered;

(H) Documented effectiveness of any PRN (as needed) medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Documentation of any known allergy or adverse drug reaction.

(b) Any errors in the MAR must be corrected with a circle of the error and the initials of the person making the correction.

(5) SELF-ADMINISTRATION OF MEDICATION.

(a) For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(b) The AFH-DD must ensure that individuals able to self-administer medications keep the medications in a place unavailable to other individuals residing in the AFH-DD and store the medications as recommended by the product manufacturer.

(6) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in an AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current OMMP registry card for the individual must be made available to the provider and maintained in the individual's record;

(B) Provide a copy of the written statement by the physician that indicates medical marijuana may mitigate the symptoms of the qualifying condition of the individual and includes instructions for the use of medical marijuana;

(C) Be responsible for obtaining the marijuana from an OMMP approved third party grower who is not the provider, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD; and

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the premises of the AFH-DD;

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on the premises of the AFH-DD;

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status, such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the house rules of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time may be stored on the property of the AFH-DD per card holder. The remainder of the OMMP card holder's marijuana must be stored at the site of the grower.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual's MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual's marijuana. The provider must monitor the individual's usage of medical marijuana to ensure safety and to document that the individual's use of medical marijuana is in compliance with the physician's instructions for using marijuana as documented in the individual's ISP.

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or licensed health care provider through a written order; and

(B) Monitored by the prescribing physician, licensed health care provider, ISP team, and provider for desired responses and adverse consequences.

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a licensed health care provider.

(c) A provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed health care provider.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to any young adult being prescribed one or more psychotropic medications or any antipsychotic medication.

(A) A mental health assessment is not required in the following situations:

(i) In case of urgent medical need;

(ii) For a change in the delivery system of the same medication;

(iii) For a change in medication within the same classification;

(iv) A one-time medication order given prior to a medical procedure; or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, the provider must notify and inform the following of the need for a mental health assessment:

(i) The legal guardian of the young adult, or the caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to the licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

(E) Within one business day after receiving a new prescription or knowledge of a new prescription for a psychotropic medication for the young adult, the provider must notify:

(i) The legal guardian of the young adult, or the caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain:

(i) The name of the prescribing physician or licensed health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(G) The provider must get a written informed consent from one of the following prior to filling a prescription for any new psychotropic medication, except in case of urgent medical need:

(i) The legal guardian of the young adult; or

(ii) The Department when the Department is the legal guardian of the young adult.

(H) When a young adult has more than two prescriptions for psychotropic medications, an annual review of the psychotropic medications must occur by a licensed health care provider or a qualified mental health professional who has the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing licensed health care provider using the Balancing Test Form (form SDS 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

(B) The provider must keep signed copies of the balancing test in the medical record for the individual for seven years.

(8) MEDICATION SAFEGUARDS.

(a) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by the licensed health care provider, from a single pharmacy that maintains a medication profile for the individual;

(B) Maintaining information about each desired effects and side effects of the medication; and

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) An individual's record must include documentation of the reason when all medications are not provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or contamination. A provider may contact the local DEQ waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage, strength, and amount being disposed;

(c) Name of the individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(10) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual the provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(11) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Delegation and training of nursing tasks to a provider, resident manager, or substitute caregiver;

(E) Teaching and education of the provider and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(F) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to the Nursing Service Plan.

(c) Community nursing services exclude direct nursing care.

(d) A Nursing Service Plan must be present when Department funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(e) When community nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(f) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR chapter 411, division 048 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

(12) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and a substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

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411-360-0170

Documentation and Record Requirements

(1) INDIVIDUAL RECORDS. A record must be developed, kept current, and available on the premises of the AFH-DD for each individual admitted to the AFH-DD.

(a) The provider must maintain a summary sheet for each individual in the AFH-DD. The summary sheet must include:

(A) The name of the individual, current and previous address, date of entry into the AFH-DD, date of birth, gender, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number (if applicable), and guardianship status; and

(B) The name, address, and telephone number of:

(i) The legal representative, family, advocate, or other significant person;

(ii) The primary licensed health care provider and designated back up licensed health care provider or clinic preferred by the individual;

(iii) The dentist preferred by the individual;

(iv) The day program or employer (if applicable);

(v) The services coordinator; and

(vi) Other representatives providing care and services to the individual.

(b) EMERGENCY INFORMATION. The provider must maintain emergency information for each individual receiving care and services in the AFH-DD in addition to the individual summary sheet identified in subsection (a) of this section. The emergency information must be kept current and must include:

(A) The name of the individual;

(B) The name, address, and telephone number of the provider;

(C) The address and telephone number of the AFH-DD where the individual resides if different from that of the provider;

(D) The physical description of the individual, which may include a picture of the individual with the date the picture was taken, and identification of:

(i) The race, gender, height, weight range, hair, and eye color of the individual; and

(ii) Any other identifying characteristics that may assist in identifying the individual, such as marks or scars, tattoos, or body piercings.

(E) Information on the abilities and characteristics of the individual including:

(i) How the individual communicates;

(ii) The language the individual uses and understands;

(iii) The ability of the individual to know how to take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the individual to understand what the individual can do for him or herself.

(F) The health support needs of the individual including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the individual;

(iv) Special dietary or nutritional needs, such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(vi) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(vii) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(viii) Specialized equipment needed for mobility, positioning, or other health-related needs.

(G) The emotional and behavioral support needs of the individual including:

(i) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(ii) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(H) Any court ordered or guardian authorized contacts or limitations;

(I) The supervision requirements of the individual and why; and

(J) Any additional pertinent information the provider has that may assist in the care and services to support the individual if a natural or man-made disaster occurs.

(c) Individual records must be made available to representatives of the Department conducting inspections or investigations as well as to individuals to whom the information pertains, the legal representative of the individual, or other legally authorized people.

(d) Individual records must be kept by the provider for a period of at least three years. When an individual moves or an AFH-DD closes, copies of pertinent information must be transferred to the new place of residence for the individual.

(e) Providers must comply with ORS 179.505 in all other matters pertaining to confidential records and release of information.

(2) INDIVIDUAL ACCOUNT RECORDS. For those individuals not yet capable of managing money as determined by the ISP team or legal representative of the individual, the provider must prepare, maintain, and keep current a separate and accurate written record of all money received or disbursed on behalf of or by the individual.

(a) The account record must include:

(A) The date, amount, and source of income received;

(B) The date, amount, and purpose of funds disbursed; and

(C) The signature of the provider or caregiver making each entry.

(b) Purchases of $10.00 or more made on behalf of an individual must be documented by receipts unless an alternate amount is otherwise specified by the ISP team.

(c) Personal Incidental Funds (PIF) are to be used at the discretion of the individual for things, such as clothing, video games, and snacks (not part of daily diet) as addressed in the ISP for the individual.

(d) Each account record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month.

(e) REIMBURSEMENT TO INDIVIDUAL. The provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of the provider, resident manager, or caregiver of the AFH-DD, or for any funds within the custody of the provider that are missing. Such reimbursement must be made within 10 business days of the verification that funds are missing.

(f) Financial records must be maintained for at least seven years.

(3) PERSONAL PROPERTY RECORD. A provider must prepare and maintain an accurate individual written record of personal property that has significant emotional or monetary value to each individual as determined by a documented ISP team or legal representative decision. The personal property record must include:

(a) The description and identifying number (if any):

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider making each entry; and

(e) A signed and dated annual review of the personal property record for accuracy.

(4) INDIVIDUAL SUPPORT PLAN. A health and safety transition plan must be developed for an individual at the time of entry for the first 60 days of care and services. An updated ISP must be developed by the end of 60 days. The ISP must be updated at least annually and more often when the support needs of the individual change.

(a) A completed ISP must be documented on the Department-mandated ISP Form and include the following:

(A) What is most important to the individual and what works and doesn't work;

(B) The care, services, and support needs as identified by a functional needs assessment;

(C) The type and frequency of care, services, and supports to be provided; and

(D) The person responsible for carrying out the care, services, and supports.

(b) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(c) For an individual in employment services or other Department-funded day services, a copy of the plan maintained by the provider for employment services or other Department-funded day services must be integrated or attached to the ISP for the individual.

(d) The ISP must include at least six hours of activities each week that are of interest to the individual that do not include television or movies made available by the provider. Activities are those available in the community and made available or offered by the provider or the CDDP.

(A) Activities may include:

(i) Recreational and leisure activities; and

(ii) Other activities required to meet the needs of an individual as described in the ISP for the individual.

(B) Activities may not include:

(i) Rehabilitation;

(ii) Educational services; or

(iii) Employment services.

(5) HOUSE RULES.

(a) A provider must establish house rules regarding hours, visitors, designated smoking areas, alcohol, use and presence of medical marijuana, meal times, use of telephones and kitchen, monthly charges and services to

be provided, and policies on refunds in case of departure, hospitalization, or death. The house rules must also include:

(A) House rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210; and

(B) Any restrictions the AFH-DD may have on the use and presence of alcohol, tobacco, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(i) Use of tobacco must be in compliance with the Oregon Indoor Clean Air Act and OAR 411-360-0130.

(ii) Use and presence of medical marijuana must be in compliance with the Oregon Medical Marijuana Act and OAR 411-360-0140. The house rules for medical marijuana must be reviewed and approved by the Department. If an individual intends to use medical marijuana in the AFH-DD, the house rules for medical marijuana must be signed and dated by the individual or the legal representative of the individual and included in the record for the individual.

(b) House rules may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-318-0010, and described in section (9) of this rule.

(c) House rules may not be in conflict with the family atmosphere of the AFH-DD or any of these rules.

(d) House rules are subject to review and approval by the Department prior to the issuance of a license and prior to implementing changes.

(e) A provider must discuss and provide a copy of the house rules to each individual and the legal representative of the individual at the time of entry and annually or as changes occur. The provider must document in the file for the individual that a copy of the house rules was provided.

(f) House rules must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and visitors.

(6) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five business days of the incident. The report must include how and when the incident occurred, who was involved, what action was taken by the provider or caregiver, the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(7) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(8) MONTHLY PROGRESS NOTES. The provider must maintain and keep current monthly progress notes for each individual residing in the AFH-DD that include, at a minimum, the progress of the ISP supports, any medical, behavioral, or safety issues, or any other events that are significant to the individual.

(9) BILL OF RIGHTS FOR INDIVIDUALS.

(a) The provider must abide by the Bill of Rights for individuals.

(b) The Bill of Rights must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and the legal representatives of the individuals. The Bill of Rights must include the name and phone number of the office to call in order to report a complaint.

(c) The provider must explain and provide a copy of the Bill of Rights along with a description of how to exercise these rights to each individual and the legal representative of the individual at the time of entry and document in the file for the individual that a copy of the Bill of Rights was provided.

(d) The provider must review the Bill of Rights with each individual and the legal representative of the individual annually or as changes occur.

(e) The Bill of Rights states each individual has the right to:

(A) Be treated as an adult with respect and dignity;

(B) Be free from abuse and neglect;

(C) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(D) Receive appropriate care and services and prompt health care as needed;

(E) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service, and medical professionals;

(F) Send and receive personal mail unopened and engage in telephone conversations as explained in OAR 411-360-0130;

(G) Have access to and participate in activities of social, religious, and community groups;

(H) Be able to keep and use personal clothing and possessions as space permits;

(I) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(J) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

(K) Have a safe and secure environment;

(L) Have a written agreement regarding the services to be provided;

(M) Voice grievance without fear of retaliation;

(N) Have freedom from training, treatment, chemical restraint, or protective physical interventions except as agreed to, in writing, in the ISP for an individual;

(O) Have freedom from mechanical restraint, except as approved by the Department;

(P) Be allowed and encouraged to learn new skills, to act on his or her own behalf to his or her maximum ability and to relate to others in an age appropriate manner;

(Q) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(R) Be free from punishment. Behavior intervention programs must be approved in writing in the ISP for an individual;

(S) Have the opportunity to contribute to the maintenance and normal activities of the household;

(T) Have access and opportunity to interact with people with or without disabilities; and

(U) Have the right to not be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070 and the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080.

(10) AFH-DD records must be kept current and maintained by the provider and be available for inspection upon request.

(11) EMPLOYMENT RECORDS. AFH-DD records must include proof that the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be included in the AFH-DD record and made available for review upon request:

(a) Completed employment applications including the names, addresses, and telephone numbers of all caregivers employed by the provider. An application for employment in any capacity in an AFH-DD must include a question asking whether the person applying for employment has ever been found to have committed abuse;

(b) Proof that the provider has the approval from the Department for each subject individual, as defined in OAR 411-360-0020, to have contact with older adults, adults with disabilities, or adults with intellectual or developmental disabilities as a result of a background check as defined in OAR 407-007-0210;

(c) Proof of required training according to OAR 411-360-0120. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of training hours;

(d) A certificate to document completion of the Department's Basic Training Course for the provider, resident manager, and substitute caregivers;

(e) Proof of mandatory abuse report training for the provider, resident manager, and substitute caregivers;

(f) Proof of any additional training required for the specific classification of an AFH-DD or the provider, resident manager, and all caregivers; and

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on the ISPs for individuals, and training on behavior supports and the Nursing Service Plan (if applicable).

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

411-360-0190

Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters an AFH-DD is subject to eligibility as described in this section.

(a) To become a Department-funded resident of an AFH-DD, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or other funded comprehensive residential services.

(b) To be eligible for Department-funded relief care in an AFH-DD, an individual must:

(A) Meet the criteria in subsection (2)(a)(A-D) of this section;

(B) Be referred by a CDDP or Brokerage; and

(C) Not be receiving services in a 24-hour residential setting as described in OAR chapter 411, division 325 or a supported living setting as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY. All individuals considered for entry into the AFH-DD must:

(a) Be referred by the CDDP or have prior written approval of the CDDP or Department if the services for the individual are paid for by the Department; or

(b) Be placed with the agreement of the CDDP if the individual is either private pay or not eligible for developmental disability services.

(4) DOCUMENTATION UPON ENTRY.

(a) At the time of a referral from the CDDP, a provider must be given:

(A) A copy of the eligibility determination document for an individual;

(B) A statement indicating the safety skills of the individual including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges of the individual including supervision and support needs;

(D) The medical history of the individual and information on health care support that includes when available:

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of the current or recommended medications, treatments, diets, and aids to physical functioning for the individual;

(F) Copies of documents relating to the guardianship or conservatorship of the individual, health care representation of the individual, or any other legal restrictions on the rights of the individual (if applicable);

(G) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Program (if applicable); and

(H) Copies of protocols, risk tracking record, and any support documentation (if available).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An ISP team meeting must be conducted prior to an individual entering an AFH-DD. The findings of the ISP team meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry for the individual;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the pre-entry information required by section (4) of this rule;

(e) Documentation of the decision to serve the individual requesting services; and

(f) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.

(6) The provider retains the right to deny the entry of any individual if the provider feels the support needs of the individual may not be met by the provider or for any other reason specifically prohibited by these rules.

(7) An AFH-DD may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the Department.

(8) TRANSFERS.

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the legal representative of the individual, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the right of the individual to a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080, except for a medical emergency or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care and services;

(C) The license for the AFH-DD has been suspended, revoked, not renewed, or the provider voluntarily surrendered the license;

(D) The care and service needs of the individual exceed the ability of the provider; or

(E) There is a mutual decision made by the individual, the legal representative of the individual, and the ISP team that a transfer is in the best interest of the individual and all ISP team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the individual and at the request of the individual, the provider, a family member, and the CDDP. If a hearing is requested to appeal a transfer, the individual must continue to receive the same services until the appeal is resolved.

(9) RELIEF CARE.

(a) Relief care may be provided to one or more individuals if the addition of the individual receiving relief care in the AFH-DD does not cause the capacity of the AFH-DD as determined by OAR 411-360-0060 to exceed five. Relief care may not be provided for longer than 14 days duration without prior approval from the Department. A provider may exceed the licensed capacity of the AFH-DD by one or more individuals receiving relief care if:

(A) Approved by the Department;

(B) The capacity of the AFH-DD as determined by OAR 411-360-0060 does not exceed five; and

(C) There is adequate bedroom and living space available in the AFH-DD for the individuals receiving relief care.

(b) The provider must have information sufficient to provide for the health and safety of an individual receiving relief care that includes the following:

(A) Medications provided in a container labeled from a pharmacy or in the original container labeled from the manufacturer;

(B) A list of medications, administration times, and self-administration information as needed. Administration of medication must be documented on a MAR;

(C) Basic summary sheet for the individual that includes the following:

(i) The name of the physician of the individual and the phone number for the physician;

(ii) The name of the emergency contact person of the individual and the phone number for the emergency contact;

(iii) List of supports related to food and drink (textures, special diets, allergies, preferences);

(iv) List of supports related to health supports;

(v) List of supports related to safety including ability to adjust water temperature; and

(vi) List of supports related to challenging behaviors.

(c) On the first relief care visit of an individual, the provider must practice and document a fire drill immediately upon the arrival of the individual. For subsequent relief care visits, the provider must review the fire evacuation procedures with the individual and document the review.

(d) No use of PRN (as needed) psychotropic medications is allowed.

(10) CRISIS SERVICES.

(a) All individuals considered for crisis services received in an AFH-DD must:

(A) Be referred by the CDDP or Department;

(B) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080; and

(C) Have a written Crisis Plan developed by the CDDP or Regional Crisis Diversion Program that serves as the justification for, and the authorization of, care, services and supports, and expenditures pertaining to an individual receiving crisis services provided under this rule.

(b) An individual receiving support services under OAR chapter 411, division 340 and receiving crisis services in an AFH-DD must have a Support Services ISP and a Support Services Brokerage Crisis Addendum upon the entry of the individual to the AFH-DD.

(c) Individuals not enrolled in support services receiving services to avert a crisis situation for less than 90 days must have a Transition Plan at the time of entry that addresses any critical information relevant to the health and safety of the individual including the current orders of a physician.

(d) An entry meeting as described in section (5) of this rule is required for an individual receiving crisis services in an AFH-DD.

(e) An exit meeting as described in section (11) of this rule is required for an individual receiving crisis services in an AFH-DD when the individual exits the AFH-DD.

(f) An individual receiving crisis services in an AFH-DD does not have appeal rights regarding exit upon completion of the Crisis Plan for the individual.

(11) IMMEDIATE EXIT.

(a) An individual who was admitted on or after July 1, 2014 may be moved without advance notice if all of the following are met:

(A) The AFH-DD provider was not notified prior to the entry of the individual to the AFH-DD that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(B) The AFH-DD provider learns that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(C) The individual presents a current risk of harm to another individual, staff, or visitor in the AFH-DD as evidenced by:

(i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or

(ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the Static 99 score for the individual or other assessment indicates a probable sexual re-offense risk to others in the AFH-DD.

(b) Prior to the move, the AFH-DD provider must contact the Central Office of the Department by telephone to review the criteria in subsection (a) of this section. The Department shall respond within one business day of contact by the AFH-DD. The parole or probation officer of the Department of Corrections must be included in the review, if available. The Department shall advise the AFH-DD provider if rule criteria for immediate exit are not met. The Department shall assist in locating placement options.

(c) A written move-out notice must be completed on form number SDS 0719DD. The form must be filled out in its entirety and a copy of the notice must be delivered in person to the individual or if applicable the legal representative of the individual. Where an individual lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(d) Prior to the move, the AFH-DD licensee must orally review the notice and the right to object with the individual, or as applicable the legal representative of the individual, and determine if a hearing is requested. A request for hearing does not delay the exit. The AFH-DD must immediately telephone the Central Office of the Department when a hearing is requested. The hearing must be held within five business days of the exit of the individual. An informal conference may not be held prior to the hearing.

(12) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers as described in section (8)(a) of this rule or for an immediate exit as described in section (11) of this rule.

(b) The provider must give at least 30 days written notice to an individual, the services coordinator, and the Department before termination of residency, unless an immediate exit as described in section (11) of this rule or where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal an exit from an AFH-DD, the individual must receive the same services until the appeal is resolved. This does not apply to an immediate exit as described in section (11) of this rule.

(c) The provider must promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves. An individual is not required to give notice to an AFH-DD provider if the individual chooses to exit the AFH-DD.

(13) EXIT MEETING. An ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the file for an individual and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent the exit of the individual from the AFH-DD (unless the individual or the legal representative of the individual is requesting the exit or the individual must exit immediately as described in section (11) of this rule);

(f) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and

(g) Documentation of the proposed plan for services for the individual after the exit.

(14) WAIVER OF EXIT MEETING. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual or the legal representative of an individual requests an immediate move from the AFH-DD; or

(b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(15) CLOSURE. Providers must notify the Department and CDDP in writing prior to announcing a voluntary closure of the AFH-DD to individuals and the legal representatives of the individuals.

(a) The provider must give each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, except in circumstances where undue delay might jeopardize the health, safety, or welfare of the individuals, provider, or caregivers.

(b) If a provider has more than one AFH-DD, the individuals may not be shifted from one AFH-DD to another AFH-DD without providing each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, unless prior approval is given and agreement obtained from the individuals, the legal representative of the individuals, and the CDDP or when undue delay might jeopardize the health, safety, or well-being of the individuals, provider, or caregivers.

(c) A provider must return the AFH-DD license to the Department if the AFH-DD closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

411-360-0250
Conditions

(1) The Department may attach conditions to a license that take effect immediately upon notification by the Department or the delivery of the notice of condition whichever is sooner. The type of conditions attached to an AFH-DD license must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is evidence of abuse, neglect, or exploitation; or

(d) The AFH-DD is not being operated in compliance with these rules.

(2) Conditions that the Department may impose on a license include, but are not limited to:

(a) Restricting the total number of individuals in the AFH-DD based upon the ability of the licensee to meet the health and safety needs of the individuals;

(b) Restricting the total number and impairment level of individuals in the AFH-DD based upon the capacity of the caregivers to meet the health and safety needs of all individuals;

(c) Requiring additional caregivers to meet the needs of the individuals;

(d) Requiring additional qualifications or training of the licensee and caregivers to meet specific individual care and service needs;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD;

(g) Restricting entry:

(A) When there is a threat of harm to the individuals of the AFH-DD and admitting new individuals compounds that threat; or

(B) When the Department has issued a notice of intent to revoke or not renew the license; and

(h) Restricting a licensee from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual.

(3) The Department issues a written notice to the provider when the Department imposes conditions to a license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183.

(4) The licensee may request a hearing in accordance with ORS Chapter 183 and this rule upon written notice of the imposition of conditions.

(a) The licensee must request a hearing within 21 days from the receipt of the written notice of conditions. Conditions take effect immediately upon issuance of the written notice of conditions and are a Final Order of the Department unless later rescinded through the hearings process.

(b) In addition to, or in lieu of a hearing, a licensee may request an administrative review by the Director of the Department. The administrative review does not diminish the right of the licensee to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. The licensee may send a written request to the Department to remove a condition if the licensee believes the situation that warranted the condition has been remedied.

(6) Conditions must be posted with the AFH-DD license in a prominent location in the AFH-DD and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825
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411-360-0275
Suspension

(1) The Department may suspend a license for reasons of abuse, neglect, or exploitation of an individual if:

(a) An immediate threat to the health, safety, or welfare of any individual exists;

(b) There is evidence of abuse, neglect, or exploitation of any individual;

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted there under; or

(d) The provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination of a background check.

(2) The licensee may request an administrative review of the decision of the Department to suspend an AFH-DD license. The Department must receive a written request for an administrative review within10 days from the receipt of the notice and order of suspension.

(a) Within 10 days from the receipt of the request for an administrative review from the licensee, all material relating to the allegation of abuse, neglect, or exploitation and the suspension of the AFH-DD license, including any written documentation submitted by the licensee within that timeframe, is reviewed by the Director of the Department. Based on review of the material, the Director determines whether to sustain the decision to suspend the AFH-DD license.

(b) A suspension is rescinded immediately if the Director does not sustain the decision to suspend the AFH-DD license.

(c) The decision of the Director is subject to a hearing under ORS Chapter 183 if requested within 90 days from the date of the decision of the administrative review.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Department withholds service payments until the license is reinstated.

(4) For the protection of the individuals, the Department arranges for the individuals in the AFH-DD to move when the AFH-DD license is suspended.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14

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Rule Caption: ODDS — Personal Support Workers Providing Developmental Disability Home Care Services
Adm. Order No.: APD 48-2014
Filed with Sec. of State: 12-26-2014
Certified to be Effective: 12-28-14
Notice Publication Date: 11-1-2014
Rules Adopted: 411-375-0000, 411-375-0010, 411-375-0020, 411-375-0030, 411-375-0040, 411-375-0050, 411-375-0060, 411-375-0070, 411-375-0080
Rules Repealed: 411-375-0000(T), 411-375-0010(T), 411-375-0020(T), 411-375-0030(T), 411-375-0040(T), 411-375-0050(T), 411-375-0060(T), 411-375-0070(T), 411-375-0080(T)
Subject: The Department of Human Services (Department), Office of Developmental Disability Services is permanently adopting rules in OAR chapter 411, division 375 for personal support workers providing home and community-based waiver, state plan, and general fund home care services to individuals eligible for developmental disability services and receiving supports authorized by the Department, Children's Intensive In-Home Services (CIIS), Community Developmental Disability Programs (CDDPs), or Support Services Brokerages (Brokerages).

The rules make permanent the temporary rule language that became effective on July 1, 2014 that established the standards and procedures governing personal support workers and the fiscal services provided on behalf of individuals who employ or contract with personal support workers.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-375-0000
Purpose

(1) The rules in OAR chapter 411, division 375 establish the standards and procedures governing personal support workers and the fiscal services provided on behalf of individuals who employ or contract with a personal support worker.

(2) Personal support workers provide home and community-based waiver, state plan, and general fund home care services to individuals eligible for developmental disability services and receiving supports authorized by the Department, Children's Intensive In-Home Services (CIIS), Community Developmental Disability Programs (CDDP), or Support Services Brokerages.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0010
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 375.

(1) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(2) "Active Provider Number" means an identifying number that is issued by the Department to a personal support worker after the personal

support worker completes the qualification and enrollment conditions as described in OAR 411-375-0020. An Active Provider Number is a provider number that is not currently in inactivated or terminated status.

(3) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Background Check" means a criminal records and abuse check as defined in OAR 407-007-0210.

(5) "Burden of Proof" means that the existence or nonexistence of a fact is established by a preponderance of the evidence.

(6) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(7) "CIIS" means "children's intensive in-home services". CIIS include the services described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350 for Medically Fragile Children's services; and

(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(8) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.

(9) "Community Transportation" is transportation provided to enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.

(10) "Comprehensive Services" means "comprehensive services" as defined in OAR 411-320-0020.

(11) "Confidentiality" means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070 (Privacy of Protected Information).

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

(13) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.

(14) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(15) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(16) "Employed Personal Support Worker" means a personal support worker who is hired by an individual with an intellectual or developmental disability or the representative of the individual. An employed personal support worker is not an independent contractor.

(17) "Employer" means the person who conducts the employer responsibilities described in these rules and applicable rules for home care services. The employer may be the individual or a person selected by the individual or the legal representative of the individual.

(18) "Enhanced Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require advanced medical or behavioral driven services and supports as defined and assessed through a functional needs assessment tool.

(19) "Exceptional Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require extensive medical or behavioral driven services and supports, beyond the enhanced services provided by an enhanced personal support worker, as assessed by a functional needs assessment tool and whose service needs also require staff to be awake more than twenty hours in a twenty-four hour period.

(20) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(21) "FICA" means "Federal Insurance Contributions Act".

(22) "Fiscal Improprieties" means financial misconduct involving the money, property, or benefits of an individual.

(a) Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking property or money from an individual, having an individual purchase items for the personal support worker, forging the signature of an individual, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a personal support worker and an individual with whom the personal support worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

(23) "Fiscal Intermediary" means a person or entity that receives and distributes service funds on behalf of an individual who employs or contracts with a personal support worker to provide home care services.

(24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.

(25) "Home Care Services" mean the services provided in accordance with:

(a) OAR chapter 411, division 034 for state plan personal care services;

(b) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(c) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;

(d) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;

(e) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;

(f) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;

(g) OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities;

(h) OAR chapter 411, division 350 for medically fragile children's services; or

(i) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(26) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(27) "Imminent Danger" means there is reasonable cause to believe the life or physical, emotional, or financial well-being of an individual is in danger if no intervention is immediately initiated.

(28) "Inactive Provider Number" means a personal support worker has a Department issued provider number that has been terminated or inactivated by the failure to act in accordance with the qualifying actions as described in OAR 411-375-0020. A personal support worker may not be paid for work performed while their provider number is inactive.

(29) "Independent Contractor" means "independent contractor" as defined in ORS 670.600.

(30) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.

(31) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(32) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether serv-

ices are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(33) "Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide Home Care Services" means a personal support worker does not possess the skills to perform home care services as defined in this rule. The personal support worker may not be physically, mentally, or emotionally capable of providing home care services. The lack of skills may put an individual at risk because the personal support worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individual.

(34) "Legal Representative":

(a) For a child, means the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and

(b) For an adult, means an attorney at law who has been retained by or for an individual, a person acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.

(35) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether the knowledge of the abuse was gained in the official capacity of the public or private official; and

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(36) "Office of Administrative Hearings" means the panel described in ORS 183.605 to 183.690 established within the Employment Department to conduct contested case proceedings and other such duties on behalf of designated state agencies.

(37) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(38) "Personal Support Worker":

(a) Means a person:

(A) Who has an active or inactive provider number.

(B) Who is either hired by an individual with an intellectual or developmental disability or the representative of the individual, or an independent contractor contracted by an individual with an intellectual or developmental disability or the representative of the individual;

(C) Who receives money from the Department for the purpose of providing home care services to an individual in the home or community of the individual;

(D) Whose compensation for providing home care services is provided in whole or in part through the Department, CDDP, CIIS, or Support Services Brokerage.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(39) "Preponderance of the Evidence" means the greater weight of evidence, such as 51 percent vs. 49 percent , that when weighed with the evidence opposed to it has more convincing force and probable truth and accuracy than not.

(40) "Protective Service and Abuse Rules" mean the rules described in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45.

(41) "Provider" means a person, organization, or business selected by an individual or the representative of an individual and paid with service funds to provide home care services according to the ISP for the individual.

(42) "Provider Enrollment" means the process for enrolling a personal support worker employed or contracted by an individual for the purpose of receiving payment for authorized home care services provided to the individual. Provider enrollment includes the completion and submission of a Provider Enrollment Agreement before receiving a provider number.

(43) "Provider Number" means the identifying number issued to a personal support worker.

(44) "PSW" means "Personal Support Worker" as defined in this rule.

(45) "PSW-IC" means "Personal Support Worker-Independent Contractor". A PSW-IC is a personal support worker who is contracted by an individual with an intellectual or developmental disability or the representative of the individual. A PSW-IC is an independent contractor except for purposes of collective bargaining.

(46) "Registry" means the Provider Registry maintained by the Oregon Home Care Commission.

(47) "Restricted Personal Support Worker" means the Department or the designee of the Department has placed restrictions on the provider enrollment of a personal support worker as described in OAR 411-375-0020.

(48) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(b) For employed personal support workers, the service agreement serves as the written job description.

(49) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services for individuals enrolled in home care services as defined in this rule.

(50) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(51) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(52) "These Rules" mean the rules in OAR chapter 411, division 375.

(53) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being a personal support worker for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be a personal support worker has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as a personal support worker for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0020

Provider Enrollment and Personal Support Worker Qualifications and Orientation

(1) A personal support worker must possess an active provider number issued by the Department to receive service funds from the Department for providing home care services.

(2) An active provider number with the Department is not a guarantee that a personal support worker shall receive any minimum amount of work or payment from the Department, CDDP, CIIS, or Support Service Brokerage.

(3) The CDDP, CIIS, or Support Services Brokerage shall assist the Department in determining whether a personal support worker meets the minimum qualifications to provide the authorized home care services paid by the Department. This assistance may include, but is not limited to:

(a) Facilitating a background check;

(b) Verifying the legal eligibility of a personal support worker to work; and

(c) Reviewing and verifying the valid certifications or licenses for the personal support worker if required to perform needed home care services.

(4) The Department, CDDP, CIIS, or Support Service Brokerage may deny a provider enrollment in the following circumstances:

(a) The applicant has been suspended or terminated as a provider by another division within the Department or the Oregon Health Authority;

(b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated adult abuse;

(c) The applicant has committed fiscal improprieties;

(d) The applicant has demonstrated a lack of skills, knowledge, or ability to adequately or safely provide home care services;

(e) The applicant has an unacceptable background check or the background check results in a closed case pursuant to OAR 407-007-0325;

(f) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (http://exclusions.oig.hhs.gov/);

(g) The Department, CDDP, CIIS, or Support Services Brokerage has information that enrolling the applicant as a personal support worker may put vulnerable individuals at risk; or

(h) The tax identification number or Social Security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

(5) RESTRICTED PROVIDER ENROLLMENT.

(a) The Department may enroll an applicant as a restricted personal support worker. A restricted personal support worker may only provide services to a specific individual who is a family member, neighbor, or friend.

(A) After conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370, the Department may approve a restricted enrollment for an applicant with a prior criminal record, unless under 407-007-0275 the applicant has been found ineligible due to ORS 443.004.

(B) The Department may approve a restricted enrollment for an applicant based on the lack of skills, knowledge, or ability of the applicant to adequately or safely provide home care services.

(b) To remove restricted personal support worker status, the applicant must complete a new application and background check and be approved by the Department.

(6) A personal support worker who is paid to provide home care services must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a background check completed by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (7) of this rule, and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to, the Department, CDDP, CIIS, or Support Services Brokerage;

(c) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 unless hired or contracted with prior to July 28, 2009 and remaining in the original position for which the personal support worker was hired or contracted for;

(d) Be legally eligible to work in the United States;

(e) Demonstrate by background, education, references, skills, and abilities that the personal support worker is capable of safely and adequately performing the tasks specified in an ISP, with such demonstration confirmed in writing by an individual or the representative of the individual, including:

(A) Ability and sufficient education to follow oral and written instructions and keep any required records;

(B) Possess the physical health, mental health, good judgment, and good personal character determined necessary to provide home care services;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the personal support worker has knowledge of emergency procedures specific to the individual;

(f) Maintain confidentiality and safeguard individual information. Unless given specific permission by an individual or the representative of an individual, the personal support worker may not share any personal information about the individual including medical, social service, financial, public assistance, legal, or other personal details;

(g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General (http://exclusions.oig.hhs.gov/);

(h) Complete and submit a Provider Enrollment Agreement to the Department and possess a current provider number issued by the Department;

(i) Have a tax identification number or Social Security number that matches the legal name of the personal support worker as verified by the Internal Revenue Service or Social Security Administration; and

(j) If providing home care services requiring professional licensure, possess a current and unencumbered license. The individual, representative of the individual, Department, CDDP, CIIS, or Support Service Brokerage must check the license status to verify the license is current and unencumbered.

(7) BACKGROUND CHECKS.

(a) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work statewide when the subject individual is working in the same employment role with the same population. The Background Check Request Form must be completed by the subject individual to show intent to work statewide.

(b) When a personal support worker is approved without restrictions following a background check fitness determination, the approval must meet the personal support worker provider enrollment requirement whether the qualified entity is the Department, CDDP, CIIS, or Support Services Brokerage.

(c) If a personal support worker has been approved under OAR 407-007-0200 to 407-007-0370 on a background check submitted to the Department between July 1, 2012 and June 30, 2014, the personal support worker may use that approval notice to work statewide with the same population until a new background check is needed. Statewide clearance does not apply to a restricted personal support worker.

(d) Background check approval is effective for two years from the date of fitness determination to provide home care services except in the following circumstances:

(A) A new fitness determination is conducted resulting in a change in approval status; or

(B) The Department has terminated the provider enrollment for the personal support worker.

(e) The Department, CDDP, CIIS, or Support Services Brokerage may conduct a background recheck more frequently based on;

(A) Additional information discovered about the personal support worker, such as possible criminal activity or other allegations; or

(B) At the request of the individual or employer. Upon request, the personal support worker must provide any additional info to complete the updated background recheck within 30 days.

(f) A personal support worker must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290 to the Department, CDDP, CIIS, or Support Services Brokerage within 24 hours.

(8) ORIENTATION.

(a) A personal support worker who wants to be available for referral on the Registry must attend a Personal Support Worker Orientation provided by the Department consistent with OAR 418-020-0020.

(b) A personal support worker must attend a Personal Support Worker Orientation consistent with the Collective Bargaining Agreement.

(9) ENHANCED AND EXCEPTIONAL PERSONAL SUPPORT WORKERS. Enhanced Personal Support Workers and Exceptional Personal Support Workers must meet the certification requirements as described in OAR 418-020-0030.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0030
Personal Support Worker-Individual Relationship

(1) A personal support worker may not be:

(a) The parent of the individual if the individual is less than 18 years of age;

(b) The legal representative who has not appointed a designated representative to plan supports for the individual;

(c) A designated representative of the individual.; or

(d) The spouse of the individual.

(2) For an employed personal support worker, the relationship between a personal support worker and an individual or the representative of the individual is an employee and employer relationship.

(3) For a PSW-IC, the relationship between a PSW-IC and an individual or the representative of the individual is a contractor relationship.

(4) It is the responsibility of an employer to create and maintain:

(a) A written job description, signed by the personal support worker and the employer, for each potential employed personal support worker. The job description must contain:

(A) The elements from an authorized ISP and supporting documents that are relevant to the position;

(B) The specific duties and available hours to provide home care services as identified in the ISP; and

(C) Authorized hours of home care services provided by the employed personal support worker to the individual. Authorized hours may not exceed the maximum amounts of units of service authorized in the ISP or annual plan.

(b) A written service agreement for each PSW-IC must:

(A) Describe the services and responsibilities of the PSW-IC;

(B) Contain all the elements from an authorized ISP and supporting documents to assure the PSW-IC may execute the service agreement; and

(C) Be signed by the parties to the contract.

(5) An individual or the representative of the individual carries primary responsibility for locating, interviewing, screening, hiring, firing, or contracting with a personal support worker. The individual or the representative of the individual has the right to employ or contract with any personal support worker enrolled as a provider as described in OAR 411-375-0020 who meets the specific home care services program qualifications.

(6) The terms of the employer-employee or contractor relationship are the responsibility of the individual or the representative of the individual to establish at the time of hire or written service agreement. The terms of employment may include dismissal or notice of resignation, work scheduling, and absence reporting. The Support Services Brokerage, CDDP, or CIIS are available to provide assistance in developing the service agreement with the individual in accordance with all applicable home care services program rules.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0040
Fiscal and Accountability Responsibility

(1) DIRECT SERVICE PAYMENTS. The Department, CIIS, CDDP, Support Services Brokerage, or contracted fiscal intermediary makes payment to a personal support worker on behalf of an individual for all home care services.

(a) Payment is considered full payment for the home care services rendered. The personal support worker may not, under any circumstances, demand or receive additional payment for home care services from the individual or any other source.

(b) The Department only makes payment for home care services that are authorized in an ISP or annual plan, and included in a written job description or contract.

(c) The Department does not make service funds available to an employer to pay a personal support worker.

(d) All service funds paid to a personal support worker must come through a fiscal intermediary

(2) TIMELY SUBMISSION OF CLAIMS. In accordance with 42 CFR 447.45, all claims for home care services must be submitted within 12 months from the date of home care services in order to be considered for payment. A claim submitted after 12 months from the date of home care services may not be considered for payment.

(3) CLAIM OR ENCOUNTER SUBMISSION. Submission of a claim, encounter, or other payment request document constitutes the agreement of a personal support worker that:

(a) The home care services were provided in compliance with the service agreement or job description in effect on the date of service;

(b) The information on the claim, encounter, or other payment request document, regardless of the format, is true, accurate, and complete; and

(c) The personal support worker understands that payment of the claim, encounter, or other payment request document is from service funds and that any falsification or concealment of a material fact may result in prosecution under federal and state laws.

(4) CLAIM OR ENCOUNTER AUTHORIZATION. Authorization of a submitted claim, encounter, or other payment request document by the employer, constitutes agreement that the personal support worker provided services in accordance with the claim.

(5) ANCILLARY CONTRIBUTIONS.

(a) FICA. Acting on behalf of the individual, the Department, CIIS, CDDP, Support Services Brokerage, or contracted fiscal intermediary shall apply any applicable FICA regulations including:

(A) Withholding the FICA contribution of the personal support worker from the payment to the personal support worker; and

(B) Submitting the FICA contribution of the individual and the amounts withheld from the payment to the personal support worker to the Social Security Administration.

(b) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to an injured worker and the beneficiary of the injured worker and also assists an employer in helping an injured worker return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the individual, the Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary:

(A) Deducts the share of the Benefit Fund assessment rate for the personal support worker for each hour or partial hour worked;

(B) Collects the share of the Benefit Fund assessment rate for the individual for each hour or partial hour of paid home care services received; and

(C) Submits the contributions of the personal support worker and the individual to the Workers' Benefit Fund.

(c) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary submits the unemployment tax.

(6) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(a) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary withholds state and federal income taxes on all payments to personal support workers as indicated in the Collective Bargaining Agreement.

(b) Employed personal support workers must complete and return a current Internal Revenue Service (IRS) W-4 form. A PSW-IC must complete and return a current IRS W-9 form.

(A) Personal support workers working with individuals receiving services through a CDDP or Support Services Brokerage must return all applicable IRS forms to the local office of the CDDP or Support Services Brokerage.

(B) Personal support workers working with individuals receiving services through CIIS must return the IRS forms to the Central Office of the Department.

(C) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary must apply standard income tax withholding practices in accordance with 26 CFR 31.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0050
Personal Support Worker Benefits and Secondary Expenses

(1) The only benefits available to personal support workers are negotiated in the Collective Bargaining Agreement and provided in Oregon Revised Statute. The Collective Bargaining Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Personal support workers are not employees of the Department, CDDP, CIIS, or Support Services Brokerage.

(2) Workers' compensation, as defined in Oregon Revised Statute, is available to eligible personal support workers as described in the Collective Bargaining Agreement. In order to receive home care services provided by a personal support worker, an individual or the representative of the individual must provide written authorization and consent to the Department for the provision of workers' compensation insurance for the personal support worker.

(3) TRANSPORTATION. A personal support worker may be reimbursed for providing community transportation related to home care services if the community transportation is prior authorized by a services coordinator or personal agent and reflected in the ISP for an individual. A personal support worker providing community transportation must have a valid license to drive, a good driving record, and proof of insurance for the vehicle used to transport the individual, as well as any other license or certificate that may be required under state and local law depending on the nature and scope of the transportation.

(a) Community transportation services exclude medical transportation. Medical transportation is provided through Medical Assistance Programs (MAP).

(b) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for ISP-related transportation except as may be covered by workers' compensation.

(c) Reimbursement for transporting an individual to accomplish ADL, IADL, or a health-related task within the community in which the individual lives or an employment goal identified on an ISP is on a per-mile basis as outlined in the Collective Bargaining Agreement.

(4) GLOVES AND MASKS. Once all public and private resources have been exhausted, an emergency supply of protective gloves and masks must be made available to a personal support worker for the safety of the personal support worker in response to documented changing or newly identified individual need as outlined in the Collective Bargaining Agreement.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0060
Overpayments

An overpayment is any payment made by the Department, CDDP, CIIS, or Support Services Brokerage to a personal support worker that is more than the personal support worker is authorized to receive. A personal support worker is authorized to receive payment for a number of hours that does not exceed the amount stated in a service agreement and are actually provided.

(1) Overpayments are categorized as follows:

(a) ADMINISTRATIVE ERROR. The Department, CDDP, CIIS, or Support Services Brokerage failed to authorize, compute, or process the correct amount of home care service hours or wage rate.

(b) PERSONAL SUPPORT WORKER ERROR. The Department overpays the personal support worker due to a misunderstanding or unintentional error.

(c) FRAUD. "Fraud" means taking actions that may result in the personal support worker receiving a benefit in excess of the correct amount whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the personal support worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department of Justice, Medicaid Fraud Unit determines when a Medicaid fraud allegation is pursued for prosecution.

(2) Overpayments for employed personal support workers are recovered as follows:

(a) Overpayments are collected prior to garnishments, such as child support, Internal Revenue Service back taxes, or educational loans.

(b) Administrative error or personal support worker error overpayments are recouped at no more than five percent of the total for the hours paid until repaid in full.

(c) When a fraud overpayment has occurred, the Department shall determine the manner and the amount to be recovered.

(d) When a provider is no longer employed as a personal support worker, any remaining overpayment is deducted from the final check to the provider. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

(3) Overpayments for a PSW-IC are recovered as follows:

(a) For overpayments discovered within 10 days after the overpayment, the full amount is deducted from the next payment to the PSW-IC.

(b) For overpayments discovered more than 10 days after the overpayment, the overpayment must be repaid within 30 days of the discovery of the overpayment on a schedule to be negotiated between the PSW-IC, services coordinator or personal agent, and the individual or the representative of the individual. The repayment period may not exceed two pay cycles. If possible, the overpayment must be repaid within the current ISP year for the individual.

(c) If a PSW-IC terminates his or her employment contract as a personal support worker before the overpayment has been fully recovered, any remaining amount is deducted from the final payment to the PSW-IC. The PSW-IC is responsible for repaying the amount in full when the final payment is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0070
Provider Enrollment Inactivation and Termination

(1) The provider enrollment for a personal support worker may be inactivated in the following circumstances:

(a) The personal support worker has not provided any paid home care services to an individual within the previous 12 months;

(b) The personal support worker informs the Department, CDDP, CIIS, or Support Services Brokerage that the personal support worker is no longer providing home care services in Oregon;

(c) The personal support worker fails to participate in a New Member Orientation for personal support workers as described in OAR 411-375-0020;

(d) The background check for a personal support worker results in a closed case pursuant to OAR 407-007-0325;

(e) The personal support worker, even if not providing any paid home care services to an individual, is being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future individuals; or

(f) The personal support worker has a credible allegation of fraud or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(2) The Department may terminate the provider enrollment for a personal support worker in the following circumstances:

(a) The personal support worker violates the requirement to maintain a drug-free work place by:

(A) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of an individual, while in the home of the individual, or while transporting the individual; or

(B) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to an individual or while in the home of the individual.

(b) The personal support worker has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;

(c) The personal support worker demonstrates a lack of skills, knowledge, or ability to adequately or safely provide home care services;

(d) The personal support worker violates the protective service and abuse rules;

(e) Notwithstanding abuse as defined in OAR 407-045-0260, the personal support worker fails to safely and adequately provide authorized home care services;

(f) The personal support worker commits fiscal improprieties including, but not limited to, billing excessive or fraudulent charges or has a conviction for fraud pursuant to federal law under 42 CFR 455.23;

(g) The personal support worker fails to provide home care services as described in the ISP and service agreement;

(h) The personal support worker lacks the ability or willingness to maintain individual confidentiality;

(i) The personal support worker engages in repeated unacceptable conduct at work, such as:

(A) Delay in arriving to work or absences from work not scheduled in advance with the individual or the representative of the individual that are either unsatisfactory to the individual or the representative of the individual or that neglect the service needs of the individual; or

(B) Inviting unwelcome guests or pets into the home or community with the individual resulting in the dissatisfaction of the individual or the representative of the individual or inattention to the required service needs of the individual.

(j) The personal support worker has been excluded or debarred by the Office of the Inspector General.

(3) NOTICE OF TERMINATION. When the Department terminates the provider enrollment of a personal support worker, the Department must issue a written notice to the personal support worker.

(a) The written notice must include:

(A) An explanation of the reason for terminating the provider enrollment;

(B) The alleged violation as listed in section (2) of this rule;

(C) The appeal rights of the personal support worker as described in OAR 411-375-0080 including the right to Union representation and where to file an appeal; and

(D) The effective date of the termination.

(b) For terminations based on substantiated abuse allegations, the written notice of termination may only contain the information allowed by law. In accordance with ORS 430.753, 430.763, and OAR 411-020-0030, the name of a complainant, witness, or alleged victim, and protected health information may not be disclosed.

(4) IMMEDIATE INACTIVATION. The Department, on the recommendation of the CDDP, CIIS, or Support Services Brokerage, may immediately inactivate the provider enrollment for a personal support worker on the date an alleged violation listed in section (2) of this rule is discovered when the alleged violation presents imminent danger to current or future individuals. The Department must make a determination to terminate or reactivate the provider number within 3 business days from the date of the notice of inactivation as described in OAR 411-375-0080. The personal support worker must file an appeal within 10 business days from the date of the notice of inactivation as described in 411-375-0080.

(5) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future individuals, the provider enrollment of a personal support worker may not be terminated during the first 10 business days to provide the opportunity for the personal support worker to file an appeal. The personal support worker must file an appeal within 10 business days from the date of the notice of termination if they wish to continue to work during the hearing process as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider enrollment of the personal support work-

er may not be terminated until the appeal is resolved unless subsequent conduct of the personal support worker presents an imminent danger to a current individual recipient of home care services provided by the personal support worker.

(6) TERMINATION IF NO APPEAL FILED. The decision of the Department becomes final if a personal support worker does not request a hearing within 10 business days from the date of the notice of termination. The provider enrollment for a personal support worker is terminated once the time period for the personal support worker to request a hearing has expired.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

411-375-0080
Administrator Review and Hearing Rights

(1) EXCLUSIONS. The following are excluded from the appeal process described in this rule:

(a) Terminations based on a background check. The personal support worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Personal support workers that have not worked within the previous 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the personal support worker must complete an application and background check.

(c) Personal support workers that fail to complete a background recheck.

(d) Personal support workers that are denied a provider enrollment number at the time of initial application.

(e) Personal support workers not currently providing services to any individuals whose provider enrollment is inactivated while an Adult or Child Protective Services investigation is being completed.

(f) Personal support workers who have been excluded or debarred by the Office of the Inspector General.

(2) FILING AN APPEAL. If a personal support worker decides to file an appeal, the personal support worker must specify in the appeal, the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice of termination, must receive the appeal within 10 business days of the notice of termination.

(3) INFORMAL CONFERENCE. The Department must conduct an informal conference, as described in OAR 461-025-0325, if requested by a personal support worker within 5 business days from the receipt of an appeal. The informal conference must be scheduled with the personal support worker and, if requested, a representative of the Union. The informal conference must involve the personal support worker and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone.

(4) OFFICE OF ADMINISTRATIVE HEARINGS.

(a) A personal support worker may file a request for a hearing with the Department if the personal support worker continues to dispute the decision to terminate the provider enrollment of the personal support worker.

(b) The request for a hearing must be filed with the Department within;

(A) 10 days of the effective date of the termination notice issued by the Department if the personal support worker wishes to continue to work during the hearing process; or

(B) 90 days from the effective date on the termination notice.

(c) The Department shall refer a request for a hearing to the Office of Administrative Hearings for scheduling a contested case hearing in accordance with OAR chapter 137, division 3.

(d) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the Department to terminate the provider enrollment is affirmed or reversed. A Final Order will be issued according to ORS 183 and OAR 461-025-0371 with the decision to all appropriate parties.

(e) No additional hearing rights have been granted to personal support workers by this rule.

(5) BURDEN OF PROOF. The Department has the burden of proving the decision to terminate the provider enrollment of a personal support worker by a preponderance of the evidence. Evidence submitted for a hearing is governed by OAR 137-003-0050.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14

Rule Caption: Eligibility for Medicaid K-State Plan in Long-Term Care Service Priorities; K-State Plan; and In-Home Services
Adm. Order No.: APD 49-2014(Temp)
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Amended: 411-015-0100, 411-030-0040, 411-035-0015, 411-035-0025, 411-035-0040, 411-035-0055, 411-035-0070, 411-035-0085
Subject: The Department of Human Services (Department) is immediately amending OAR 411-015, 30, and 35 to be in compliance with the Center for Medicare and Medicaid Services (CMS), which must be in effect no later than January 1st, 2015. Medicaid for Modified Adjusted Gross Income (MAGI) OHP Plus medical benefit eligibility does not have any limitation on the individual's resources or the home equity value of their home.

CMS requires that individuals applying for Medicaid State Plan K-option with an underlying Medicaid OHP Plus benefit package under 410-200 through the Medicaid for Modified Adjusted Gross Income (MAGI) are eligible only if certain other eligibility criteria are met, including the equity value of an individual's home as established in OAR 461-145-0220. These individuals are subject to requirements of 461-145-0220 regarding the equity value of the home in the same manner as if they were requesting these services under OSIPM.

As part of this amendment, stronger language was added to emphasize "requirements of the rules" for transfer of assets to be applied in the same manner as if they were requesting these services under OSIPM. The wording "requirements of the rules" is then consistent with the rule pertaining to the equity value of the home.

The in-home service rules in division 030 and K-Plan division 35 are required to use all the eligibility criteria as the 411-015 rules, as well as eligibility criteria specific to each of the program rules in divisions 30 and 35. This means all mutual eligibility criteria was tied back to the 411-015 eligibility criteria.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-015-0100
Eligibility for Nursing Facility or Medicaid Home and Community-Based Services

(1) To be eligible for nursing facility services or Medicaid home and community-based services, a person must:

(a) Be age 18 or older.

(b) Be eligible for the Medicaid OHP Plus benefit package.

(A) Individuals receiving Medicaid OHP Plus under OAR 410-200 coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(i) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(ii) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

(B) When an individual is disqualified for a transfer of assets, a notice for transfer of assets is required in accordance with OAR 461-175-0310.

(C) When an individual is determined ineligible for the equity value of a home, a notice for being over resources is required in accordance with 461-175-0200.

(c) Meet the functional impairment level within the service priority levels currently served by the Department as outlined in OAR 411-015-0010 and the requirements in OAR 411-015-0015.

(2) To be eligible for services paid through the Spousal Pay Program, an individual must meet the requirements listed above in section (1) of this rule in addition to the requirements in OAR 411-030-0080.

(3) Individuals who are age 17 or younger and reside in a nursing facility, are eligible for nursing facility services only and are not eligible to receive Medicaid home and community-based services administered by the Department's Aging and People with Disabilities.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.060, 410.070 & 414.065
Hist.: SSD 7-1991(Temp), f. & cert. ef. 4-1-91; SSD 13-1991, f. 6-28-91, cert. ef. 7-1-91; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 17-

2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05; SPD 19-2005, f. & cert. ef. 12-29-05; SPD 19-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 45-2013, f. 12-13-13, cert. ef. 12-15-13; APD 9-2014(Temp), f. 4-17-14, cert. ef. 4-21-14 thru 10-18-14; APD 35-2014, f. & cert. ef. 10-1-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-030-0040
Eligibility Criteria

(1) In-home services are provided to individuals who meet the established priorities for service as described in OAR chapter 411, division 015 who have been assessed to be in need of in-home services.

(a) Payments for in-home services are not intended to replace the resources available to an individual from the individual's natural supports.

(b) An individual whose service needs are sufficiently and appropriately met by available natural supports is not eligible for in-home services.

(2) An individual receiving Medicaid in-home services must:

(a) Meet the established priorities for service as described in OAR chapter 411, division 015;

(b) Meet all the eligibility requirements in 411-015-0010 through 411-015-0100; and(c) Reside in a living arrangement described in OAR 411-030-0033;

(3) An individual receiving services through the Independent Choices Program must:

(a) Meet the established priorities for service as described in OAR chapter 411, division 015;

(b) Be a current recipient of OSIPM (Oregon Supplemental Income Program Medical).

(c) Reside in a living arrangement described in OAR 411-030-0033; and

(d) Be 18 years of age or older.

(4) To be eligible for Medicaid in-home services, an individual must employ an enrolled homecare worker or contracted in-home care agency. To be eligible for ICP, a participant must employ an employee provider.

(5) Initial eligibility for Medicaid in-home services, or the ICP, does not begin until an individual's service plan has been authorized by the Department or the Department's designee. The service plan must identify the provider who delivers the authorized services, include the date when the provision of services begins, and include the maximum number of hours authorized. Service plans must be based upon the least costly means of providing adequate services.

(6) If, for any reason, the employment relationship between an individual and provider is discontinued, an enrolled homecare worker or contracted in-home care agency must be employed within 14 business days for the individual to remain eligible for in-home services. A participant of ICP must employ an employee provider within 14 business days to remain eligible for ICP services. The individual's case manager has the authority to waive the 14 business day restriction if the individual is making progress towards employing a provider.

(7) An eligible individual who has been receiving in-home services who temporarily enters a nursing facility or medical institution must employ an enrolled homecare worker or contracted in-home care agency within 14 business days of discharge from the facility or institution for the individual to remain eligible for in-home services. A participant of ICP must employ an employee provider within 14 business days of discharge to remain eligible for ICP services.

(8) EMPLOYER RESPONSIBILITIES.

(a) In order to be eligible for in-home services provided by a homecare worker, an individual must be able to, or designate a representative to:

(A) Locate, screen, and hire a qualified homecare worker;

(B) Supervise and train the homecare worker;

(C) Schedule the homecare worker's work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the homecare worker;

(E) Recognize, discuss, and attempt to correct any performance deficiencies with the homecare worker; and

(F) Discharge an unsatisfactory homecare worker.

(b) Individuals who are unable to meet the responsibilities in subsection (a) of this section are ineligible for in-home services provided by a homecare worker. Except as set forth in subsection (f) of this section, individuals ineligible for in-home services provided by a homecare worker may designate a representative to manage the individual's responsibilities as an employer on the individual's behalf. A representative of an individual may not be a homecare worker providing homecare worker services to the individual. Individuals must also be offered other available community-based service options to meet the individual's service needs, including contracted in-home care agency services, nursing facility services, or other community-based service options.

(c) An individual determined ineligible for in-home services provided by a homecare worker and who does not have a representative may request in-home services provided by a homecare worker at the individual's next re-assessment, but no sooner than 12 months from the date the individual was determined ineligible. To reestablish eligibility for in-home services provided by a homecare worker, an individual must attend training and acquire, or otherwise demonstrate, the ability to meet the employer responsibilities in subsection (a) of this section. Improvements in health and cognitive functioning, for example, may be factors in demonstrating the individual's ability to meet the employer responsibilities in subsection (a) of this section. If the Department determines an individual may not meet the individual's employer responsibilities, the Department may require the individual appoint an acceptable representative.

(d) The Department retains the right to approve the representative selected by an individual. Approval may be based on, but is not limited to, the representative's criminal history, protective services history, or credible allegations of fraud or collusion in fraudulent activities involving a public assistance program.

(e) If an individual's designated representative is unable to meet the employer responsibilities of subsection (a) of this section, or the Department does not approve the representative, the individual must designate a different representative or select other available services.

(f) An individual with a history of credible allegations of fraud or collusion in fraud with respect to in-home services is not eligible for in-home services provided by a homecare worker.

(9) REPRESENTATIVE.

(a) The Department, or the Department's designee, may deny an individual's request for any representative if the representative has a history of a substantiated adult protective service complaint as described in OAR chapter 411, division 020. The individual may select another representative.

(b) An individual with a guardian must have a representative for service planning purposes. A guardian may designate themselves as the representative.

(10) Additional eligibility criteria for Medicaid in-home services exist for individuals eligible for:

(a) The Consumer-Employed Provider Program as described in OAR chapter 411, division 031;

(b) The Independent Choices Program as described in OAR 411-030-0100 of these rules; and

(c) The Spousal Pay Program as described in OAR 411-030-0080 of these rules.

(11) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals, and other institutions that provide assistance with ADLs, are not eligible for in-home services.

(12) Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93, Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 1-2006(Temp), f. & cert. ef. 1-13-06 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 10-2013(Temp), f. & cert. ef. 5-23-13 thru 11-19-13; SPD 43-2013, f. 10-31-13, cert. ef. 11-1-13; APD 9-2014(Temp), f. 4-17-14, cert. ef. 4-21-14 thru 10-18-14; APD 35-2014, f. & cert. ef. 10-1-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0015
Eligibility for Supplemental K State Plan Services

To be eligible for any Medicaid Supplemental K State Plan services defined in this division, consumers must:

(1) Be eligible for Medicaid long term care services and supports as described in OAR 411-015-0010 through 411-015-0100.

(2) Not have natural supports or other services available in the community that would meet the identified need.

(3) Not be eligible for the item through Medicare, other Medicaid programs, or other medical coverage.

(4) Have an identified need in their person-centered service plan that:

(a) Supports the desires and goals of the consumer receiving services and increases a consumer's independence;

(b) Reduces a consumer's need for assistance from another person; or

(c) Maintains a consumer's health and safety.

(5) Be provided the choice to accept or deny the service being offered.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 to 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0025
Eligibility for Consumer Electronic Back-up Systems and Assistive Technology

(1) To be eligible for electronic back-up systems or mechanisms, a consumer must not be receiving community-based care in a licensed care setting.

(2) Electronic back-up systems and assistive technologies must be appropriate and cost effective to meet the service needs of the consumer and:

(a) For new equipment:

(A) Are limited to a maximum of $5000 for purchasing of a device.

(B) Monthly rentals or lease fee limits are posted on the APD rate table.

(b) For repairs:

(A) Repair of purchased devices may be done if the repair is more cost effective than purchasing a new device.

(B) Repairs of rented or leased equipment are the responsibility of the provider.

(c) Monthly maintenance, fees or service charges are not included in the maximums described in (a) or (b).

(3) Exceptions to the $5000 limitation may be granted if the consumer has service needs that warrant an exception for payment and no alternative is available to meet the needs of the consumer.

(4) Expenditures over $500 must be approved by the Department.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 - 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0040
Eligibility Criteria for Chore Services

(1) To be eligible for chore services, a consumer must not be receiving community-based care in a licensed care setting.

(2) An eligible consumer may receive chore services under any of the following circumstances:

(a) The consumer is the owner, buyer, or renter of premises in which the consumer lives.

(A) If a renter, the consumer must have received an eviction notice, written warning, or deficiency notice from the landlord or a public housing agency related to cleanliness or health issues of the unit; or

(B) If an owner or buyer, the consumer must have received a written notice from a government agency or a lender concerning health, safety, or public nuisance deficiencies or violations.

(b) The consumer needs garbage pick-up and removal, or payment of previous garbage bills, in order to continue or resume receiving services to ensure the home is safe for the consumer and their service providers.

(c) The consumer's premises requires heavy cleaning to remove hazardous debris or dirt in the home to ensure the consumer's home is safe and allows for independent living.

(d) The consumer's premises require the removal of outside debris (for example, trees, leaves, clutter) which is endangering the structure of the home or the ability of the consumer to enter or exit safely.

(e) The services must be completed to enable the consumer to move from one residence to another and to establish services in the new home.

(3) If the service is done in a rental location, the service must be a service that is not required of the landlord under applicable landlord-tenant law.

(4) Chore services are not part of the consumer's on-going service plan. Once the chore service is complete, homecare workers may begin or continue ongoing housekeeping.

(5) Chore services must be appropriate and cost effective to meet the service need of the consumer.

(a) If feasible, three bids are required from companies or vendors who provide chore services. A bid is not comparative pricing through the Internet.

(b) Bids over $500.00 require a state licensed contractor.

(6) The consumer must sign a written agreement to:

(a) Have a vendor clean their home;

(b) Remove hazardous debris; or

(c) To haul off agreed upon items that may pose a health and safety risk to the consumer or others.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 to 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0055
Eligibility for Consumer Environmental Modifications

(1) To be eligible for environmental modifications, a consumer must not be receiving community-based care in a licensed care setting.

(2) An eligible consumer may receive environmental modification under any of the following circumstances:

(a) The consumer is the owner, buyer, or renter of premises in which the consumer lives.

(b) If in a rental location, the consumer must have a written and signed agreement between the consumer receiving services and the owner or landlord of the rental property.

(A) The agreement must include:

(i) The scope of work provided;

(ii) That the modification is permissible; and

(iii) That the Department shall not restore the rental unit to its former condition.

(B) Environmental modifications in rental locations must not be for services that are required of the landlord under applicable landlord-tenant law.

(3) Environmental modifications are not part of the consumer's on-going service plan. Once the environmental modification is complete, environmental modification services shall cease and a reduction notice must not be issued.

(4) Environmental modifications must be appropriate, cost effective, and meet the service need of the consumer.

(a) Environmental modifications are limited to a maximum of $5000 per environmental modification.

(b) If feasible, three bids are required from companies or vendors. A bid is not comparative pricing through the Internet.

(5) Exceptions to the $5000 limitation may be granted if the consumer has service needs that warrant an exception for payment and no alternative is available to meet the needs of the consumer.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 to 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0070
Eligibility for Consumer Transition Services

(1) Eligibility for transition services covered through the K-State Plan are restricted to consumers transitioning from a nursing facility or the Oregon State Hospital, as defined in OAR 309-091-0005(16), into a community-based or in-home program.

(2) Consumers transitioning from an acute care hospital directly to a community-based or in-home program are not eligible for transition services under this rule.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 to 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

411-035-0085
Consumer Eligibility Criteria for Voluntary Consumer Training Services

(1) To be eligible for K-State Plan Voluntary Consumer Training Services, consumers must be or be expected to, receive services in a setting described in OAR 411-030-0033, In-Home Service Living Arrangement.

(2) Services are voluntary in nature.

(3) Services may be provided to designated representatives performing the duties of a consumer-employer on behalf of the consumer.

(4) Natural supports and designated representatives may receive services in addition to the eligible consumer.

(5) All in-home consumers participating in the Consumer-Employed Provider Program must be offered the voluntary training during the in-home service planning process. Case managers must make a referral to an approved training provider.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 to 410.300, 441.520
Hist.: APD 16-2014, f. & cert. ef. 6-4-14; APD 49-2014(Temp), f. 12-30-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Licensure of Adult Foster Homes for Adults who are Older or Adults with Physical Disabilities
Adm. Order No.: APD 50-2014(Temp)
Filed with Sec. of State: 12-31-2014

Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Amended: 411-050-0602, 411-050-0625, 411-050-0640, 411-050-0645, 411-050-0655, 411-050-0665
Subject: The Department is immediately amending the adult foster home rules in OAR chapter 411, division 050 to comply with the 2014 legislative changes from HB 4151. The Department will do this by amending rules in OAR 411-050-0645 and 411-050-0655 to add in:

411-050-0655 the requirement that the Department or AAA notifies the adult foster home, if known, that a person who is applying for admission to the home is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805;

411-050-0655 that a licensed provider may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805; and

411-050-0645 that in the event the licensed provider learns, after the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805, an involuntary move-out notice may be issued without reasonable advance notice.

The Department is also amending the rules in OAR 411-050-0602; 411-050-0625; 411-050-0640; 411-050-0645 for the purpose of clarifying existing rules and to make housekeeping changes by fixing wording, formatting, grammar, punctuation, and to fix an incorrect rule reference.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-050-0602
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 050:

(1) "AAA" means an Area Agency on Aging, which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that has responsibility for local administration of programs within the Department of Human Services. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(3) "Activities of Daily Living (ADL)" mean the personal, functional activities defined in OAR 411-015-0006 (Long-term Care Service Priorities for Individuals Served) required by an individual for continued well-being, which are essential for health and safety.

(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are not related to the licensee, resident manager, or floating resident manager, by blood, marriage, or adoption and who are 65 years of age or older or an adult with a physical disability. For the purpose of these rules, adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care. "Facility" and "Home" are synonymous with "Adult Foster Home".

(5) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to control his or her own health care in any circumstance. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).

(6) "Applicant" means a person who completes an application for an adult foster home license or who completes an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(8) "Back-Up Provider" means a licensee, approved resident manager, or approved floating resident manager who does not live in the home, who has agreed to oversee the operation of an adult foster home, of the same license classification or level, in the event of an emergency.

(9) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.

(10) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(11) "Care" means the provision of assistance with activities of daily living to promote a resident's maximum independence and enhance the resident's quality of life. Care includes, but is not limited to, assistance with bathing, dressing, grooming, eating, money management, recreation, and medication management excluding assistance with self-medication.

(12) "Caregiver" means any person responsible for providing care and services to residents, including the licensee, resident manager, floating resident manager, shift caregivers, and any temporary, substitute, or supplemental staff, or other person designated to provide care and services to residents.

(13) "Care Plan" means a licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services are to be provided.

(14) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA).

(15) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(16) "Co-Applicant" is synonymous with "Applicant" as defined in this rule.

(17) "Co-Licensee" is synonymous with "Licensee" as defined in this rule.

(18) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(19) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a resident or the condition of an adult foster home.

(20) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(21) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.

(22) "Criminal Records and Abuse Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(23) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight.

(24) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

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

(26) "Director" means the Director of the Department of Human Services or that person's designee.

(27) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more activities of daily living.

(28) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made that renders the licensee unable to operate the facility or renders the facility uninhabitable on a temporary, extended, or permanent basis.

(29) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(30) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.

(31) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the

license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(32) "Facility" is synonymous with "Adult Foster Home" as defined in this rule.

(33) "Family Member" spouses in a legally recognized marriage or domestic partnership, natural parent, child, sibling, adopted child, adoptive parent, adoptive sibling, 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.

(34) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency.

(35) "Floating Resident Manager" means an employee of the licensee, approved by the local licensing authority, who under the direction of the licensee, is directly responsible for the care of residents in one or more adult foster homes owned by that licensee. A floating resident manager is not required to live in any one adult foster home owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.

(36) "Home" means the physical structure in which residents live. "Home" is synonymous with "Adult Foster Home" as defined in this rule.

(37) "Home-like" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services, and encourages independence, choice, and decision-making by the residents.

(38) "House Policies" means the written and posted statements addressing house activities in an adult foster home.

(39) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity. Indirect ownership interest includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

(40) "Initial Point of Safety" means a designated area that has unobstructed direct access to a public sidewalk or street located not less than 25 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.

(41) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation, local Department offices, and Area Agencies on Aging that contract with the Department to provide adult protective services to adults who are older or adults with physical, mental, or developmental disabilities.

(42) "Legal Representative" means a person who has the legal authority to act for a resident.

(a) For health care decisions, the legal representative is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or a power of attorney for health care.

(b) For financial decisions, the legal representative is a legal conservator, an agent under a power of attorney, or a representative payee.

(43) "Level" means the designation of ventilator-assisted care assigned to an adult foster home license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(44) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include but are not limited to a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).

(45) "Licensee" means the person who was issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is also the operator.

(46) "Limited Adult Foster Home" means a home that provides care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

(47) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(48) "Local Licensing Authority" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the adult foster home licensing process.

(49) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to a person other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(50) "Occupant" means any person residing in or using the facilities of an adult foster home, including residents, licensees, resident manager, friends or family members, day care individuals, and room and board tenants. A floating resident manager who resides in an adult foster home on a temporary basis is considered an occupant.

(51) "Older" means any person at least 65 years of age.

(52) "Ombudsman" means the Oregon Long-Term Care Ombudsman or a designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of adult foster home residents.

(53) "Operator" is synonymous with "Licensee" as defined in this rule.

(54) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. Persons with an ownership or control interest mean a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(55) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, a resident's body that the resident may not easily remove and that restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(56) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other health-care practitioner with prescribing authority.

(57) "Primary Caregiver" means a qualified licensee or resident manager, who lives in the home, personally provides care and services, and ensures the health and safety of residents a minimum of five consecutive days per week. More than one person who meets this criterion may be considered a primary caregiver as specified below:

(a) Co-licensees working three and four consecutive days and nights per week;

(b) Two approved resident managers working three and four consecutive days and nights per week; or

(c) A licensee and an approved resident manager working three and four consecutive days and nights per week.

(58) "P.R.N. (pro re nata)" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(59) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, floating resident manager, or shift caregiver). "Provider" does not include substitute caregivers or the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(60) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-050-0625 and OAR 411-050-0630, except for completing the training and testing requirements. (See OAR 411-050-0635)

(61) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, psychoactive medications include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

(62) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(63) "Relative" means those persons identified as family members as defined in this rule.

(64) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the person's visit is four weeks or greater.

(65) "Resident" means an adult who is older or an adult with a physical disability who is receiving room and board and care and services for compensation in an adult foster home on a 24-hour day basis.

(66) "Resident Manager" means an employee of the licensee, approved by the local licensing authority, who lives in the adult foster home, and is directly responsible for the care of the residents.

(67) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739 and OAR 411-050-0655)

(68) "Residential Care" means the provision of care on a 24-hour day basis.

(69) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are older or adults with physical disabilities and who do not need assistance with activities of daily living. Room and board facilities for two or more persons are required to register with the Department under the rules in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Adult foster homes with room and board tenants are not subject to OAR chapter 411, division 068.

(70) "Screening" means the evaluation process used to identify an individual's ability to perform activities of daily living and address health and safety concerns.

(71) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(72) "Self-Preservation" in relation to fire and life safety means the ability of a resident to respond to an alarm without additional cues and reach a point of safety without assistance.

(73) "Services" mean activities that help the residents develop skills to increase or maintain their level of functioning or assist the residents to perform personal care, activities of daily living, or individual social activities.

(74) "Shift Caregivers" mean caregivers who, by written variance of the local licensing authority, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(75) "Subject Individual" means:

(a) Any person 16 years of age or older, including:

(A) All licensed adult foster home providers and provider applicants;

(B) All persons intending to work in or currently working in an adult foster home, including, but not limited to, direct caregivers and individuals in training;

(C) Volunteers if allowed unsupervised access to residents; and

(D) Occupants, excluding residents, residing in or on the premises of the proposed or currently licensed adult foster home, including:

(i) Household members;

(ii) Room and board tenants; and

(iii) Persons visiting for four weeks or greater.

(b) "Subject Individual" does not apply to:

(A) Residents of the adult foster home or the residents' visitors;

(B) A person who lives or works on the adult foster home premises who does not:

(i) Have regular access to the home for meals;

(ii) Have regular use of the adult foster home's appliances or facilities; or

(iii) Have unsupervised access to the residents or the residents' personal property.

(C) A person providing services to the residents that is employed by a private business not regulated by the Department.

(76) "Substantial Compliance" means a level of compliance with these rules where any deficiencies pose no greater risk to resident health or safety than the potential for causing minor harm.

(77) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Department.

(78) "Tenant" means any individual who is residing in an adult foster home who receives services, such as meal preparation, laundry, and housekeeping.

(79) "These Rules" mean the rules in OAR chapter 411, division 050.

(80) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-050-0642.

(81) "Ventilator Assisted Care" means the provision of mechanical assistance to replace spontaneous breathing. Devices used include, but are not limited to, mechanical ventilators, manual ventilators, and positive airway pressure ventilators.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0400, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-050-0625
Qualification and Training Requirements

(1) APPLICANT AND LICENSEE QUALIFICATIONS. An adult foster home applicant and licensee must meet and maintain the requirements specified in this section. An adult foster home applicant and licensee must:

(a) Live in the home that is to be licensed at least five days and nights per week and function as the primary caregiver as defined in OAR 411-050-0602 unless:

(A) There is, or shall be upon licensure, an approved resident manager who lives in the home and works five consecutive days and nights per week as the primary caregiver; or

(B) There is, or shall be upon licensure, two approved primary caregivers who live in the home and work three and four consecutive days and nights per week respectively; or

(C) A variance for shift caregivers has been granted according to section (6) of this rule.

(b) Subsections (a)(A), (B), and (C) of this section are not intended to prohibit the occasional and temporary absence of the primary caregiver from the adult foster home;

(c) Be at least 21 years of age;

(d) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide 24-hour care for adults who are older or adults with physical disabilities. An applicant and licensee must have a statement from a physician, nurse practitioner, or physician assistant indicating that the applicant or licensee is physically, cognitively, and emotionally capable of providing care to residents. An applicant or licensee with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment, rehabilitation, or references regarding current condition;

(e) Have an approved background check annually in accordance with OAR 411-050-0620 and maintain that approval as required;

(f) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members or representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals, case managers, Department and local licensing authority staff, and others involved in the care of the residents;

(g) Be able to respond appropriately to emergency situations at all times;

(h) Have a clear understanding of his or her responsibilities, knowledge of the residents' care plans, and the ability to provide the care specified for each resident; and

(i) Not be listed on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(2) APPLICANT AND LICENSEE TRAINING REQUIREMENTS.

(a) Applicants and licensees must have the education, experience, and training to meet the requirements of the requested classification of the home (See OAR 411-050-0630).

(b) A potential applicant or applicant must complete the following training requirements prior to obtaining a license:

(A) Attend a Department-approved orientation program conducted by the local licensing authority responsible for the licensing of the proposed adult foster home;

(B) Attend the Department's Ensuring Quality Care Course and pass the examination to meet application requirements for licensure;

(i) Potential applicants and applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 calendar days of the end of the Department's Ensuring Quality Care Course.

(ii) Potential applicants and applicants who fail a second examination must retake the Department's Ensuring Quality Care Course prior to repeating the examination.

(C) Comply with the Department's January 1, 2015 student policies for the Department's Ensuring Quality Care Course; and

(D) Have current CPR and First Aid certification.

(i) Accepted CPR and First Aid courses must be provided or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(ii) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(3) FINANCIAL REQUIREMENTS. A licensee applicant and licensee must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income.

(a) If an initial license applicant is unable to demonstrate the financial ability and resources required by this section, the Department may require the applicant to furnish a financial guarantee, such as a line of credit or guaranteed loan, to fulfill the requirements of this rule.

(b) If at any time there is reason to believe an applicant or licensee may not have sufficient financial resources to operate the home in compliance with these rules, the local licensing authority may request additional documentation, which may include verification of the applicant's or licensee's ability to readily access the requested funds. Circumstances that may prompt the request of additional financial information include, but are not limited to, reports of insufficient food, inadequate heat, or failure to pay employees, utilities, rent, or mortgage. Additional documentation of financial resources may include, but are not limited to:

(A) The Department's Verification of Financial Resources form (SDS 0448F) completed and stamped or notarized by the applicant's or licensee's financial institution;

(B) Documentation on letterhead of the applicant's or licensee's financial institution that includes:

(i) The last four digits of the applicant's or licensee's account number;

(ii) The name of the account holder, and if the account is not in the applicant's or licensee's name, verification the applicant or licensee has access to the account's funds;

(iii) The highest and lowest balances for each of the most recent three full months;

(iv) The number of any non-sufficient fund (NSF) payments in each of the last three full months, if any; and

(v) Signature of the banking institution's representative completing the form and date; or

(C) Demonstration of cash on hand equal to a minimum of two months of operating expenses.

(c) The local licensing authority must request the least information necessary to verify compliance with this section.

(4) RESIDENT MANAGER REQUIREMENTS. A resident manager must live in the home as specified in section (1)(a) of this rule and function as the primary caregiver under the licensee's supervision. A resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (2)(b)(D) of this rule. The local licensing authority shall verify all the requirements of these rules have been satisfied prior to approval of a resident manager.

(5) FLOATING RESIDENT MANAGER REQUIREMENTS.

(a) A floating resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (2)(b)(D) of this rule, except as indicated in (5)(b) of this rule.

(b) If the licensee has one or more homes within the jurisdiction of more than one local licensing authority, a currently approved floating resident manager is not required to complete the Department-approved orientation in more than one licensing authority's jurisdiction. This exception does not prohibit the local licensing authority within an exempt area from requiring the floating resident manager applicant to attend the local licensing authority's orientation.

(c) The floating resident manager must be oriented to each home prior to providing resident care in each home. Documentation of orientation to every home the floating resident manager works in must be available within each home as stated in section (7)(a)-(j) of this rule.

(d) Facility records in each of the homes a floating resident manager is assigned to work must maintain proof the floating resident manager has a current and approved background check.

(e) A floating resident manager may not be used in lieu of a shift caregiver, except on temporary basis, when the regular shift caregiver is unavailable due to circumstances, such as illness, vacation, or termination of employment.

(6) SHIFT CAREGIVER REQUIREMENTS.

(a) Shift caregivers may be used in lieu of a resident manager if granted a written variance by the local licensing authority. Use of shift caregivers detracts from the intent of a home-like environment, but may be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs, such as those with Alzheimer's disease, AIDS, or head injuries. If shift caregivers are used, each shift caregiver must meet or exceed the experience and training qualifications for the license classification requested.

(b) Shift caregivers must meet and maintain the qualification and training requirements specified in sections (1)(b) through (2)(b)(D) of this rule. The local licensing authority shall verify all the requirements of these rules have been satisfied prior to approval of a shift caregiver.

(7) CAREGIVER ORIENTATION. Prior to providing care to any resident, a resident manager, floating resident manager, and shift caregiver must be oriented to the home and to the residents by the licensee. Orientation must be clearly documented in the facility records. Orientation includes, but is not limited to:

(a) Location of any fire extinguishers;

(b) Demonstration of evacuation procedures;

(c) Instruction of the emergency preparedness plan;

(d) Location of resident records;

(e) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(f) Location of medications and the key for the medication cabinet;

(g) Introduction to residents;

(h) Instructions for caring for each resident;

(i) Delegation by a registered nurse for nursing tasks, if applicable; and

(j) Policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(8) EMPLOYMENT APPLICATION. An application for employment in any capacity in an adult foster home must include a question asking whether the person applying for employment has been found to have committed abuse. Employment applications must be retained for at least three years. (See OAR 411-050-0645)

(9) EXCLUSION VERIFICATION. A licensee must verify the resident manager and shift caregivers are not listed on either the Office of Inspector General's (http://oig.hhs.gov) or the General Services Administration's (https://www.sam.gov) Exclusion Lists prior to the resident manager or shift caregivers working or training in the home. Verification must be clearly documented in the facility records. (See also 411-050-0625(11)(h))

(10) TRAINING WITHIN FIRST YEAR OF INITIAL LICENSING OR APPROVAL. Within the first year of obtaining an initial license or approval, the licensee, resident manager, floating resident manager, and shift caregivers must complete the Six Rights of Safe Medication Administration and a Fire and Life Safety training as available. The Department or local licensing authority and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(11) ANNUAL TRAINING REQUIREMENTS.

(a) Each year after initial licensure, the licensee, resident manager, floating resident manager, and shift caregivers must complete at least 12 hours of Department-approved training related to the care of adults who are older or adults with physical disabilities in an adult foster home setting. Up

to four of those hours may be related to the business operation of the adult foster home.

(b) A licensee, resident manager, floating resident manager, and shift caregivers, as applicable, must maintain CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training, Ensuring Quality Care Course (not including EQC refresher courses), adult foster home orientation, Ventilator Assisted Care Course and skills competency checks, or consultation with an accountant do not count toward the required 12 hours of annual training.

(12) SUBSTITUTE CAREGIVER REQUIREMENTS. A substitute caregiver left in charge of the residents for any period of time, may not be a resident, and must at a minimum, meet the following qualifications prior to working or training in the home:

(a) Be at least 18 years of age;

(b) Have an approved background check annually in accordance with OAR 411-050-0620 and maintain that approval as required;

(c) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members and representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals, case managers, Department and local licensing authority staff, and others involved in the care of the residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of his or her responsibilities, have knowledge of the residents' care plans, and be able to provide the care specified for each resident, including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide care for adults who are older or adults with physical disabilities, as determined by reference checks and other sources of information;

(g) Have current CPR and First Aid certification within 30 calendar days of the start of employment.

(A) Accepted CPR and First Aid courses must be provided by or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(B) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(h) Not be listed on the Office of Inspector General's or General Services Administration's Exclusion Lists. Licensees must verify the substitute caregiver is not listed on either the Office of Inspector General's (oig.hhs.gov) or the General Services Administration's (www.sam.gov) Exclusion Lists prior to the substitute caregiver working or training in the home. Verification must be clearly documented in the facility records.

(13) TRAINING REQUIREMENTS FOR SUBSTITUTE CAREGIVERS.

(a) A substitute caregiver must be oriented to the home and to the residents by the licensee or resident manager prior to the provision of care to any residents. Orientation includes, but is not limited to:

(A) Location of any fire extinguishers;

(B) Demonstration of evacuation procedures;

(C) Instruction of the emergency preparedness plan;

(D) Location of resident records;

(E) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(F) Location of medications and the key for the medication cabinet;

(G) Introduction to residents;

(H) Instructions for caring for each resident;

(I) Delegation by a registered nurse for nursing tasks if applicable; and

(J) Education on the policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(b) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W) and receive instruction in specific care responsibilities from the licensee, resident manager, or floating resident manager prior to working or training in the home. The Workbook must be completed by the substitute caregiver without the help of any others. The Workbook is considered part of the required orientation to the home and residents.

(A) The local licensing authority may grant a variance to the Caregiver Preparatory Training Study Guide and Workbook requirement for a substitute caregiver who:

(i) Holds a current Oregon license as a health care professional, such as a physician, nurse practitioner, physician assistant, registered nurse, or licensed practical nurse; and

(ii) Who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to adults who are older or adults with physical disabilities.

(B) A certified nursing assistant (CNA) or certified medical assistant (CMA) must complete the Caregiver Preparatory Training Study Guide and Workbook and have a certificate of completion signed by the licensee.

(c) A substitute caregiver routinely left in charge of an adult foster home for any period that exceeds 48 continuous hours is required to meet the education, experience, and training requirements of a resident manager as specified in this rule. A licensee may not leave a substitute caregiver or concurrent substitute caregivers routinely in charge of the home for any period that exceeds 48 continuous hours within one calendar week. This requirement is not intended to prevent a qualified substitute caregiver from providing relief care in the absence of the primary caregiver, such as for a one or two week vacation. In such an event, the licensee must arrange for the qualified back-up provider to be available as needed.

(14) If a licensee has demonstrated non-compliance with one or more of these rules, the Department may require, by condition, additional training in the deficient area.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1995, f. & cert. ef. 3-15-95; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0440, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-050-0640

Renewal Application and Fees

(1) At least 60 calendar days prior to the expiration of a license, the local licensing authority must send a reminder notice and renewal application to the licensed provider. The local licensing authority must investigate any information in the renewal application and conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) RENEWAL APPLICATION REQUIREMENTS. To renew an adult foster home license, the licensee must complete the Department's Renewal Application form (SDS 448C) and submit the form to the local licensing authority with the non-refundable fee prior to the expiration date of the current license. Timely submission of the renewal application and non-refundable fee shall keep the license in effect until the local licensing authority or the Department takes action.

(a) The renewal application is not complete until all of the required application information is submitted to the local licensing authority.

(b) A renewal application remaining incomplete at the time of license expiration or failure to provide accurate information on the renewal application shall result in the denial of the application.

(4) The license renewal application must include:

(a) Complete contact information for the licensee, including:

(A) A mailing address if different from the adult foster home; and

(B) A business address for electronic mail, if applicable.

(b) The maximum resident capacity;

(c) Identification of:

(A) Any relatives needing care;

(B) The maximum number of any room and board tenants;

(C) The maximum number of day care individuals; and

(D) The names of any other occupants in the home.

(d) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903). The Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns;

(e) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form SDS 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months;

(f) If the home is leased or rented, a copy of the current signed and dated lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date signed by the landlord and applicant, as applicable;

(g) Documentation of a current approved background check for each subject individual as described in OAR 411-050-0620;

(h) A $20 per bed non-refundable fee for each non-relative resident;

(i) If the licensee intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant or applicants, as appropriate;

(j) Written information describing the operational plan for the adult foster home, including:

(A) The use of substitute caregivers and other staff;

(B) A plan of coverage for the absence of the resident manager or the shift caregivers, if applicable; and

(C) The name of a qualified back-up licensee, approved resident manager, or floating resident manager who does not live in the home but has been oriented to the home. The licensee must submit a signed agreement with the listed back-up provider annually and maintain a copy in the facility records.

(k) Proof of required continuing education credits as specified in OAR 411-050-0625.

(5) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). The home shall be treated as an unlicensed facility, subject to civil penalties, if the required renewal information and fee are not submitted to the local licensing authority prior to the license expiration date and residents remain in the home. (See OAR 411-050-0685)

(6) The local licensing authority shall provide the licensee a copy of the Department's inspection report, (form SDS 517A and, if applicable, form SDS 517B) citing any violations and specifying a time frame for correction. The time frame for correction of violations may not exceed 30 calendar days from the date of inspection.

(7) The Department shall deny a renewal application if cited violations are not corrected within the time frame specified by the local licensing authority.

(8) The local licensing authority shall not renew a license unless the following requirements are met:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Department;

(b) The local licensing authority has completed an inspection of the adult foster home;

(c) The Department has completed a background check in accordance with OAR 411-050-0620;

(d) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(e) The local licensing authority has determined the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the licensee or any nursing assistant employed by the licensee has been responsible for abuse; and

(f) The local licensing authority has determined the licensee is not listed on the Office of Inspector General's and General Services Administration's Exclusion Lists.

(9) In seeking the renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof to establish compliance with ORS 443.705 to 443.825 and these rules is upon the licensee.

(10) In seeking the renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof to establish noncompliance with ORS 443.705 to 443.825 and these rules is upon the Department.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443..001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0420, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; SPD 42-2013(Temp), f. & cert. ef. 10-16-13 thru 4-13-14; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-050-0645

Operational Standards

(1) GENERAL PRACTICES.

(a) A licensee must own, rent, or lease the home to be licensed, however, the local licensing authority may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the adult foster home unless the owner, landlord, or lessor is named on the license.

(b) Each adult foster home must meet:

(A) All applicable local business license, zoning, building, and housing codes;

(B) The Fair Housing Act; and

(C) State and local fire and safety regulations for a single-family residence.

(c) ZONING. Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

(d) COOPERATION AND ACCESS. The licensee must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), and local licensing and investigative personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department, CMS, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records and, with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030)

(e) CONFIDENTIALITY. Information related to residents must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules.

(f) TRANSPORTATION. A licensee must arrange for or provide appropriate transportation for residents when needed.

(g) STAFFING STANDARDS. The licensee must have qualified caregivers, including awake caregivers as necessary, sufficient in number to meet the 24-hour needs of each resident in addition to caring for any children or relatives beyond the license capacity of the adult foster home.

(A) A licensee may not employ a resident manager, floating resident manager, or shift caregiver who does not meet or exceed the qualifications, training, and classification standards for the adult foster home as described in OAR 411-050-0625 and 411-050-0630; and

(B) A licensee may not employ or allow any caregiver to train or work in the home who is on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(h) ABSENCE OF A PRIMARY CAREGIVER. If a primary caregiver is absent from the home for 10 days or more, the licensee must notify the local licensing authority in writing at least seven days prior to the primary caregiver's absence or immediately upon knowing of the absence. Notification must state the reason for and anticipated length of the absence. The licensee must also submit a staffing plan to the local licensing authority, signed by the back-up provider, demonstrating coverage that meets the needs of the residents during the primary caregiver's absence.

(i) CHANGE OF PRIMARY CAREGIVER. If a primary caregiver changes during the period the license covers, the licensee must notify the local licensing authority within 24 hours and identify who is providing care.

(A) If a licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in primary caregiver, the licensee must submit an updated plan of 24-hour coverage to the local licensing authority within seven days.

(B) If a resident manager, floating resident manager, or shift caregiver changes, the licensee must submit a request for a change of resident manager, floating resident manager, or shift caregiver, as applicable, to the local licensing authority along with:

(i) The Department's supplemental application form (SDS 448B) completed by the resident manager applicant, floating resident manager applicant, or shift caregiver applicant;

(ii) A completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903) for the new applicant;

(iii) Documentation of the initiation of or a copy of an approved background check; and

(iv) A $10 non-refundable fee.

(C) When there is a change in primary caregiver, an approved floating resident manager may assume the responsibilities of the live-in, primary caregiver until a new primary caregiver is employed. If a new primary caregiver is not employed within 60 calendar days, the floating resident manager must be designated as the home's resident manager and the licensee must notify the local licensing authority of the change in status.

(D) The local licensing authority shall issue a revised license when there is a change in a primary caregiver who is identified on the license.

(j) UNEXPECTED AND URGENT STAFFING NEED. If the local licensing authority determines an unexpected and urgent staffing need exists, the local licensing authority may authorize a person who has not completed the Department's current Ensuring Quality Care Course and passed the current examination to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the local licensing authority of the unexpected and urgent staffing need in writing and satisfactorily demonstrate:

(A) The licensee's inability to live in the home and act as the primary caregiver;

(B) The licensee's inability to find a qualified resident manager or shift caregiver, as applicable; and

(C) The proposed staff person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(k) RESPONSIBILITY. A licensee is responsible for the supervision, training, and overall conduct of all caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(l) SEXUAL RELATIONS. Sexual relations between residents and any employee of the adult foster home, licensee, or any member of the licensee's household or family is prohibited unless a pre-existing relationship existed.

(m) COMMUNICATION.

(A) Applicants for an initial license must obtain and provide to the local licensing authority a current, active business address for electronic mail prior to obtaining a license.

(B) A licensee must notify the local licensing authority within 24 hours upon a change in the home's business address for electronic mail;

(C) A licensee must notify the local licensing authority, the residents and the resident's family members, legal representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the adult foster home within 24 hours of the change.

(D) A licensee must notify the local licensing authority in writing prior to any change of the licensee's residence or mailing address.

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and person indicated on the license obtained from the local licensing authority.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication, including advertising and disclosure statements, that the license to operate the adult foster home is not transferable and the licensee must refer them to the local licensing authority for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the local licensing authority prior to the transfer of operation of the home.

(d) The licensee must promptly notify the local licensing authority in writing about the licensee's intent to close or convey the adult foster home to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to section (13)(a) of this rule.

(e) The licensee must inform a person intending to assume operation of an existing adult foster home that the residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the local licensing authority at a level appropriate to the care needs of the residents in the home.

(3) FORECLOSURE.

(a) A licensee must provide written notification to the local licensing authority within 10 calendar days after receipt of any notice of default, or any notice of potential default, with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the licensee.

(b) The licensee must provide a copy of the notice of default or warning of potential default to the local licensing authority.

(c) The licensee must provide written updates to the local licensing authority at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:

(A) The current status on what action has been or is about to be taken by the licensee with respect to the notice received;

(B) The action demanded or threatened by the holder of the security interest; and

(C) Any other information reasonably requested by the local licensing authority.

(d) The licensee must provide written notification within 24 hours to the local licensing authority upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.

(e) If the subject default property is licensed as an adult foster home, the licensee must provide written notification of the following within 24 hours to the local licensing authority, and all the residents and the residents' representatives, if applicable, regarding:

(A) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the licensee or an entity owning any property occupied or used by the licensee;

(B) The entry of any judgment with respect to such litigation;

(C) The passing of the date 40 days prior to any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee; and

(D) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.

(A) Meal substitutions for scheduled menu items in compliance with section (4)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee must maintain the weekly menus for a minimum of the 12 most recent months during which the home has conducted business.

(d) There must be no more than a 14-hour span between the evening and morning meals. Snacks do not substitute for a meal in determining the 14-hour span. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(e) Food may not be used as an inducement to control the behavior of a resident.

(f) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(g) Special consideration must be given to a resident with chewing difficulties and other eating limitations. Special diets must be followed, as prescribed in writing, by the resident's physician, nurse practitioner, or physician assistant.

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.

(i) The household utensils, dishes, glassware, and household food may not be stored in bedrooms, bathrooms, or living areas.

(j) Meals must be prepared and served in the home where the residents live. Payment for meals eaten away from the home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibil-

ity of the licensee. Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(k) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(l) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(5) TELEPHONE.

(a) The home must have a working landline and corded telephone with a listed number that is separate from any other number the home has, such as, but not limited to, internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If a licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as the phone line complies with the requirements of these rules. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.

(c) Restrictions on the use of the telephone by the residents must be specified in the written house policies and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

(6) FACILITY RECORDS.

(a) Facility records must be kept current, maintained in the adult foster home, and made available for review upon request. Facility records include, but are not limited to:

(A) Proof the licensee and all subject individuals have a background check approved by the Department as required by OAR 411-050-0620;

(B) Proof the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0625, including:

(i) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours;

(ii) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination;

(iii) Documentation of orientation to the adult foster home for the resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable;

(iv) Employment applications and the names, addresses, and telephone numbers of all caregivers employed or used by the licensee; and

(v) Verification that all caregivers are not listed on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(C) Copies of notices sent to the local licensing authority pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver;

(D) Proof of required vaccinations for animals on the premises;

(E) Well water tests, if required, according to OAR 411-050-0650. Test records must be retained for a minimum of three years;

(F) Agreements and specialized contracts with the Department, copies of the adult foster home's private-pay contracts, any contracts with residents eligible for Medicaid services, such as an agreement pertaining to storage fees after leaving the home, and any other contracts, such as contracts with room and board tenants or individuals receiving day care services; and

(G) Records of evacuation drills according to OAR 411-050-0650, including the date, time of day, evacuation route, length of time for evacuation of all occupants, names of all residents and occupants, and which residents and occupants required assistance. The records must be kept at least three years.

(b) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions attached to the license, if any;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0650;

(D) The Residents' Bill of Rights;

(E) The home's current house policies that have been reviewed and approved by the local licensing authority;

(F) The Department's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Department's inspection forms (form SDS 517A and if applicable, form SDS 517B), including how corrections were made since the last annual inspection;

(I) The Department's notice pertaining to the use of any intercoms, monitoring devices, and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers, including the contact number for at least one back-up provider who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee must be readily visible and posted by a central telephone in the adult foster home.

(7) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-050-0655;

(B) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

(C) Documentation that the licensee has informed all residents of the right to formulate an Advance Directive;

(D) FINANCIAL INFORMATION:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. The Resident Account Record (form SDS 713) or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of $5 or more made on behalf of a resident.

(ii) Contracts signed by residents or the residents' representatives may be kept in a separate file but must be made available for inspection by the local licensing authority.

(E) Medical and legal information, including, but not limited to:

(i) Medical history, if available;

(ii) Current prescribing practitioner orders;

(iii) Nursing instructions, delegations, and assessments, as applicable;

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately); and

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete, accurate, and current care plan;

(G) A copy of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or the resident's representative;

(H) SIGNIFICANT EVENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident, including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. All entries must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to residents, the residents' authorized representatives or other legally authorized persons, all caregivers working in the home, and the Department, the local licensing authority, the investigative authority, case managers, and the Centers for Medicare and Medicaid Services (CMS) for the purpose of conducting inspections or investigations.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) RECORD RETENTION. Records, including any financial records for residents, must be kept for a period of three years from the date the resident left the home.

(d) CONFIDENTIALITY. In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005 (Privacy of Protected Information).

(8) HOUSE POLICIES. House policies must be in writing and a copy given to the resident and the resident's family or representative at the time of admission and at the time the screening and assessment is conducted. A signed copy of the house policies must be obtained at the time of admission and placed in the resident's record. House policies must be consistent with the practices of the licensee, staff, occupants, and visitors of the home. House policies established by the licensee must:

(a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions, or religious preferences;

(b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises;

(c) Include a schedule of meal times;

(d) Include the home's policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable;

(e) Include a clear and precise statement of any limitation to the implementation of Advance Directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include:

(A) A description of conscientious objections as they apply to all occupants of the adult foster home;

(B) The legal authority permitting such objections under ORS 127.505 to 127.660; and

(C) Description of the range of medical conditions or procedures affected by the conscientious objection. (See OAR 411-050-0655)

(f) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home, or any of these rules;

(g) Be reviewed and approved by the local licensing authority prior to the issuance of a license and prior to implementing any changes; and

(h) Be posted with the required posted items, in a location where they are easily seen and read by residents and visitors as described in section (7) of this rule.

(9) RESIDENT MOVES AND TRANSFERS. The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, the licensee must submit copies of pertinent information from the resident's record to the resident's new place of residence at the time of move. Pertinent information must include at a minimum:

(A) Copies of current prescribing medical practitioner's orders for medications, current medication sheets, and an updated care plan; and

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move or transfer.

(b) A licensee must immediately document voluntary and involuntary moves or transfers from the adult foster home in the resident's record as events take place. (See sections (11) and (12) of this rule)

(10) VOLUNTARY MOVES AND TRANSFERS.

(a) If a resident eligible for Medicaid services or the resident's representative gives notice of the resident's intent to leave the adult foster home, or the resident leaves the home abruptly, the licensee must promptly notify the resident's case manager.

(b) A licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to the resident's:

(A) Voluntary move from one bedroom to another in the adult foster home;

(B) Voluntary transfer from one adult foster home to another home that has a license issued to the same person; or

(C) Voluntary move to any other location.

(c) Notifications and authorizations of voluntary moves and transfers must be documented and available in the resident's record.

(d) The licensee remains responsible for the provision of care and services until the resident has moved from the home.

(11) INVOLUNTARY MOVES AND TRANSFERS.

(a) A resident may only be moved involuntarily to another room within the adult foster home, transferred to another adult foster home operated by the same licensee for a temporary or permanent stay, or moved from the adult foster home for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable that exceeds the level of care and services the facility provides;

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0650;

(C) Welfare of the resident or other residents;

(i) The resident exhibits behavior that poses an imminent danger to self or others, including acts that result in the resident's arrest or detention;

(ii) The resident engages in behavior or action that repeatedly and substantially interfere with the rights, health, or safety of the residents or others; or

(iii) The resident engages in illegal drug use or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care or failure to make payment for room and board;

(E) The adult foster home has had its license revoked, not renewed, or the license was voluntarily surrendered by the licensee;

(F) The home was not notified prior to the resident's admission, or learns following the resident's admission, that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(G) The licensee's Medicaid Provider Enrollment Agreement or specialized contract is terminated (pertains only to residents eligible for Medicaid); or

(H) The resident engages in the use of medical marijuana in violation of the home's written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(b) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary or permanent stay without a minimum of 30 calendar days' written notice. The notice must be delivered in person to the resident and must be delivered in person or sent by registered or certified mail to the resident's legal representative, guardian, or conservator, and a copy must be immediately submitted to the resident's case manager, as applicable. Where a resident lacks capacity and there is no legal representative, a copy of the notice must be immediately submitted to the State Long Term Care Ombudsman. The written notice must:

(A) Be on the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901);

(B) Be completed by the licensee; and

(C) Include the following information:

(i) The resident's name;

(ii) The reason for the proposed move or transfer, including the specific reasons the facility is unable to meet the resident's needs;

(iii) The date of the proposed change;

(iv) The location to which the resident is going, if known;

(v) A notice of the right to hold an informal conference and hearing;

(vi) The name, address, and telephone number of the person giving the notice; and

(vii) The date the notice is issued.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) to (C) below, but must do so as soon as possible using the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901). The notice must be given in person to the resident, the resident's representative, guardian, conservator, and a copy must be immediately submitted to the resident's case manager, as applicable. The reasons for the notice must be fully documented in the resident's record. The licensee remains responsible for the provision of care and services until the resident has moved from the home. A licensee may give less than 30 calendar days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident, including:

(i) The resident has a medical emergency that requires the immediate care of a level or type the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home and the licensee determines he or she is no longer able to meet the needs of the resident; or

(C) The home was not notified prior to the resident's admission, or learns following the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(i) In the event a resident is given notice of an involuntary move due to (11)(c)(C) of this rule, the notice may be given without reasonable advance notice.

(ii) The resident shall be given the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) as stated in (11) of this rule.

(12) RESIDENT HEARING RIGHTS. A resident, who has been given formal notice of an involuntary move or refused the right of return or re-admission, is entitled to an informal conference and hearing prior to the involuntary move or transfer as follows:

(a) INFORMAL CONFERENCE. The local licensing authority must hold an informal conference as promptly as possible after the request is received. The local licensing authority must send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident and at the resident's request a family member, case manager, Ombudsman, legal representative of the resident, the licensee, and a representative from an adult foster home association or SEIU if requested by the licensee. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the local licensing authority must document the outcome in writing and no administrative hearing is needed.

(b) ADMINISTRATIVE HEARING. If a resolution is not reached as a result of the informal conference, the resident or the resident's representative may request an administrative hearing. If the resident is being moved or transferred with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the move or transfer. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(13) CLOSURE OF ADULT FOSTER HOMES.

(a) A licensee must notify the local licensing authority prior to the voluntary closure, proposed sale, or transfer of ownership of the home, and give the residents and the residents' families, representatives, and case managers, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice must be given as soon as possible, according to section (11)(c).

(c) A licensee must surrender the physical license to operate an adult foster home to the local licensing authority at the time of the adult foster home's closure.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.705 to 443.795, & 443.880

Stats. Implemented: ORS 197.660 to 197.670, 443.001 to 443.004, 443.705 - 443.825, 443.875, & 443.991

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0644, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-050-0655

Standards and Practices for Care and Services

(1) SCREENING AND ASSESSMENT.

(a) Prior to admission, the licensee must conduct and document a screening to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home;

(B) Determine if the licensee and caregivers are able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home; and

(C) Include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information, as needed, to assure the prospective resident's care needs shall be met.

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care professional involved in the care of the prospective resident. A copy of the screening document must be:

(A) Given to the prospective resident or the prospective resident's legal representative; and

(B) Placed in the resident's record if admitted to the home; or

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.

(c) If the Department or AAA knows that a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805 is applying for admission to an adult foster home, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805.

(e) REQUIRED DISCLOSURES. The licensee must disclose the home's policies and practices to a prospective resident or the prospective resident's legal representative, as applicable, including:

(A) HOUSE POLICIES. The licensee must provide a copy of the house policies and disclose any policies that may limit the prospective resident's activities or preferences while living in the adult foster home. Examples include, but are not limited to, the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms and monitors. The licensee must disclose the home's policy regarding the legal presence and use of medical marijuana. (See OAR 411-050-0645);

(B) CONTRACT. The licensee must provide a copy of any contract a prospective resident or the prospective resident's legal representative may be asked to sign;

(C) MEDICAID ENROLLMENT STATUS. The licensee must inform a prospective resident or the prospective resident's representative if the home serves individuals eligible for Medicaid services; and

(D) LONG-TERM CARE ASSESSMENT. The licensee must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.

(2) PRIOR TO ADMISSION.

(a) The licensee must obtain and document general information regarding a resident prior to the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary;

(b) Prior to admission, the licensee must obtain and place in the resident's record:

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as applicable. Any verbal orders must be followed with written orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record;

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies; and

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.

(c) The licensee must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care;

(d) The licensee must provide written information to the resident or the resident's representative about the resident's right to make decisions concerning Advance Directives and the resident's right to accept or refuse medical care. The licensee must provide:

(A) A written copy of the adult foster home's policies regarding implementation of Advance Directives; and

(B) A clear and precise statement of limitation if the licensee is not able to implement an Advance Directive on the basis of conscience that includes:

(i) Identification of the state legal authority under ORS 127.625 permitting a conscientious objection; and

(ii) Descriptions of medical conditions or procedures affected by the licensee's conscientious objection.

(e) The licensee must review the Residents' Bill of Rights and the home's current house policies with the resident and the resident's legal representative, as appropriate. The discussion must be documented by having the resident sign and date a copy of the house policies that have been approved by the local licensing authority and the current Residents' Bill of Rights (form SDS 305A). A copy of the signed house policies and Residents' Bill of Rights must be maintained in the resident's record.

(3) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs, preferences, and capabilities, and what assistance the resident requires for various tasks. The resident's care plan must also include:

(A) By whom, when, and how often care and services shall be provided;

(B) The resident's ability to perform activities of daily living (ADLs);

(C) Special equipment needs;

(D) Communication needs (examples may include, but are not limited to, hearing or vision needs, such as eraser boards or flash cards, or language barriers, such as sign language or non-English speaking);

(E) Night needs;

(F) Medical or physical health problems, including physical disabilities, relevant to care and services;

(G) Cognitive, emotional, or other impairments relevant to care and services;

(H) Treatments, procedures, or therapies;

(I) Registered nurse consultation, teaching, delegation, or assessment;

(J) Behavioral interventions;

(K) Social, spiritual, and emotional needs, including lifestyle preferences, activities, and significant others involved;

(L) The ability to exit in an emergency, including assistance and equipment needed;

(M) Any use of physical restraints or psychoactive medications; and

(N) Dietary needs and preferences.

(b) The licensee must review and update each resident's care plan every six months or as a resident's condition changes. The review must be documented in the resident's record at the time of the review and include the date of the review and the licensee's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.

(4) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. A licensee must obtain a medical professional consultation and assessment to meet the care needs of a resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other licensed health care professional.

(b) A licensee must also request a registered nurse consultation under the following conditions:

(A) When a resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education;

(B) When written parameters are needed to clarify a prescribing practitioner p.r.n. order for medication and treatment (See section (5)(g) of this rule);

(C) Prior to the use of physical restraints when not assessed, taught, and reassessed, according to section (5)(m) of this rule, by a physician, nurse practitioner, physician assistant, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist;

(D) Prior to requesting psychoactive medications to treat behavioral symptoms or the use of new psychoactive medications when not assessed, taught, and reassessed according to section (5)(h) of this rule, by a physician, nurse practitioner, physician assistant, or mental health practitioner; and

(E) When care procedures are ordered that are new for a resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. A registered nurse may determine a nursing care task be taught utilizing the delegation process. RN delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047)

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Department upon request.

(5) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. Medication resource material must be readily available at the home and include the reason a medication is used, any specific instructions, the medication's actions, and common side effects.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(A) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (5)(f)(D) of this rule)

(B) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(c) MEDICATION SUPPLIES. The licensee must have all currently prescribed medications, including p.r.n. medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained prior to depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(d) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other licensed medical professional-generated order must:

(A) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order;

(B) Transcribe the order onto the medication administration record (MAR);

(C) Implement the order as written; and

(D) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(e) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee must allow a resident to receive hospice services. The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order; and

(B) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(f) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record (MAR) must be kept for each resident and must:

(A) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, and the date and time each medication or supplement is to be given;

(B) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed;

(C) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials;

(D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time; and

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.

(g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. DOCUMENTATION. As needed (p.r.n) medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.

(h) PSYCHOACTIVE MEDICATIONS.

(A) A licensee is not required to request an evaluation of a resident's use of a psychoactive medication if the resident is admitted to the home and the resident has been prescribed the psychoactive medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the psychoactive medication is in the resident's record.

(B) If a resident is admitted to a home with no documented history as to the reason for taking a psychoactive medication, or if the licensee requests medical professional intervention to address behavioral symptoms, the licensee must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the psychoactive medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:

(i) A probable cause of the resident's behavior;

(ii) Behavioral and environmental interventions to be used instead of or in addition to psychoactive medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the resident's record prior to administering a psychoactive medication; and

(iii) A plan for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.

(C) The prescription and order for a psychoactive medication must specify the dose, frequency of administration, and the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(D) The licensee and all caregivers must know the intended effect of a psychoactive medication for a particular resident and the common side effects, as well as the circumstances for reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional.

(E) The resident's care plan must identify and describe the behavioral symptoms for which psychoactive medications are prescribed and a list of all interventions, including behavioral, environmental, and medication.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS, STORAGE, AND DISPOSAL.

(A) MEDICATION CONTAINERS. Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container. Medications stored in advanced set up containers are required to be labeled as described in this rule.

(B) OVER-THE-COUNTER MEDICATIONS. Over-the-counter medication purchased for a specific resident's use must be marked with the resident's name. Over-the-counter medications in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(C) STORAGE OF RESIDENT MEDICATION. All resident medications, including over-the-counter medications, must be kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight, and separate from medications belonging to the licensee, caregivers, and all other non-residents. Medications requiring refrigeration must also be locked and stored separately from non-resident medications. Residents may not have access to medications belonging to the licensee, caregivers, or other household members.

(D) STORAGE OF NON-RESIDENT MEDICATION. All non-resident medications must be kept locked and separate from resident medications.

(E) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee's knowledge of a recall or contamination. A licensee must contact the local DEQ waste management company in their area for instructions on proper disposal of unused or expired medications.

(i) The disposal of a resident's medication must be documented in the resident's record and the documentation must be readily available in the resident's record.

(ii) The disposal of a controlled substance must be documented in the resident's record and the disposal must be witnessed by a caregiver who is 18 years of age or older.

(iii) DOCUMENTATION OF DISPOSAL. Documentation regarding the disposal of medications and controlled substances must include:

(I) The date of disposal;

(II) Description of the medication, (i.e., name, dosage, and amount being disposed);

(III) Name of the resident for whom the medication was prescribed;

(IV) Reason for disposal;

(V) Method of disposal;

(VI) Signature of the person disposing of the medication; and

(VII) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

(j) ADVANCED SET-UP. The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for the advanced set-up of medications. If used, each resident must have his or her own container with divisions for the days of the week and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route, and description of each medication. The container must be stored in the locked area with the residents' medications.

(k) SELF-ADMINISTRATION OF MEDICATION. A licensee must have a prescribing practitioner written order of approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep their medications in their own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(l) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated.

(m) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Residents' Bill of Rights listed in section (7) of this rule. Prior to the use of any type of physical restraint, the following must be completed:

(A) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(B) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used and as infrequently as possible. The licensee must obtain a written order from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner prior to the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

(i) Procedural guidance for the use of the physical restraint;

(ii) The frequency for reassessment;

(iii) The frequency and procedures for nighttime use; and

(iv) Dangers and precautions for using the physical restraint.

(C) Physical restraints may not be used on an as needed (p.r.n.) basis in an adult foster home.

(D) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(E) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment, and cautions for maintaining the resident's safety while restrained must also be recorded in the resident's care plan. The resident's record must include:

(i) The completed assessment as described in this rule;

(ii) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner;

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint; and

(iv) The reassessments completed by a medical professional as described above in subsection (B) of this rule.

(F) DAYTIME USE. A resident physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(G) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed.

(H) If any physical restraints are used in an adult foster home, the restraints must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all occupants of the home.

(I) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(6) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like atmosphere. The training of the licensee and caregivers and care and supervision of residents must be appropriate to the age, care needs, and conditions of the residents in the home (See OAR 411-050-0625). Additional staff may be required if, for example, day care individuals are in the home or if necessary to safely evacuate the residents and all occupants from the home as required by OAR 411-050-0650.

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure the plan is implemented as instructed.

(c) NOTIFICATION. The licensee must notify emergency personnel, the resident's physician, nurse practitioner, physician assistant, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee, or caregiver with the resident at the time of the emergency must first call 911 or the appropriate emergency number for their community. This does not apply to a resident with a medical emergency who practices Christian Science;

(i) If a resident is receiving hospice services, the caregivers must follow the written instructions for medical emergencies from the hospice nurse.

(ii) If a resident has a completed Physician's Orders for Life-Sustaining Treatment (POLST) or other legal documents, such as an Advance Directive or Do Not Resuscitate (DNR) order, copies of the documents must be made available to the emergency personnel when they arrive.

(B) HOSPITALIZATION. In the event the resident is hospitalized;

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes; and

(D) DEATH. Upon the death of the resident.

(d) The licensee shall not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of the residents.

(e) The licensee must exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of the residents.

(f) A qualified caregiver must always be present and available at the home when a resident is in the home. A resident may not be left in charge in lieu of a caregiver.

(g) ACTIVITIES. The licensee must make available at least six hours of activities per week that are of interest to the residents, not including television and movies. Information regarding activity resources is available from the local licensing authority. Activities must be oriented to individual preferences as indicated in the resident's care plan (See section (3)(a)(J) of this rule). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.

(h) DAY CARE. Prior to the admission of each day care individual, the licensee must:

(A) Conduct and document a screening as described in section (1)(a) of this rule;

(B) Obtain current medical professional orders as described in section (5)(b) of this rule if medications are to be administered and the necessary delegations, as applicable; and

(C) Develop and maintain a current, written medication administration record (MAR) as described in section (5)(f) of this rule if medications are to be administered.

(i) DIRECT INVOLVEMENT OF CAREGIVERS. The licensee or caregivers must be directly involved with the residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.

(j) RESIDENT MONEY. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge any of a resident's funds. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule may be construed to prevent the licensee or the licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0002 and ORS 127.520)

(A) Personal incidental funds (PIF) for individuals eligible for Medicaid services must be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) The licensee and other caregivers may not accept gifts from the residents through undue influence or accept gifts of substantial value. Caregivers and family members of the caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. The licensee or other caregivers may not influence, solicit from, or suggest to any of the residents or the residents' legal representatives that the residents or the residents' legal representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(k) The licensee and other caregivers may not loan money to the residents.

(7) RESIDENTS' BILL OF RIGHTS. The licensee, the licensee's family, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Department must be explained and a copy given to each resident at the time of admission. The Residents' Bill of Rights states each resident has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be informed of all resident rights and all house policies;

(c) Be encouraged and assisted to exercise constitutional and legal rights, including the right to vote;

(d) Be informed of their medical condition and the right to consent to or refuse treatment;

(e) Receive appropriate care, services, and prompt medical care as needed;

(f) Be free from abuse;

(g) Complete privacy when receiving treatment or personal care;

(h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

(i) Have access to and participate in activities of social, religious, and community groups;

(j) Have medical and personal information kept confidential;

(k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;

(l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not to be used for discipline or convenience;

(m) Manage their own financial affairs unless legally restricted;

(n) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services;

(o) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons, for the welfare of the resident or other residents, or for nonpayment;

(q) A safe and secure environment;

(r) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(s) Make suggestions or complaints without fear of retaliation; and

(t) Be free of discrimination in regard to the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.

Stat. Auth.: ORS 127.520, 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Renumbered from 411-050-0445(8) thru (10); SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0447, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-050-0665

Abuse Reporting, Complaints, and Notification of Findings

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents who are under their care. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

(a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the investigative authority.

(b) LICENSEE REPORTING. The licensee must immediately notify the investigative authority of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).

(2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including, but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) The licensee must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The local licensing authority must furnish each adult foster home with a Complaint Notice that states the telephone number of the Department, the investigative authority, and the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Department, the local licensing authority, or the investigative authority.

(6) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45, as applicable.

(7) Immediate protection shall be provided for the residents by the Department, the local licensing authority, or the investigative authority, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) PRELIMINARY FINDINGS. The Department, through the investigative authority, shall provide, by written communication or electronic mail, a copy of the preliminary abuse investigation report to the licensee and complainant within seven business days of the completion of the investigation:

(a) The report shall be accompanied by a notice informing the licensee and complainant of their right to give additional information about the content of the report to the investigative authority within 10 calendar days of receipt of the report.

(b) The investigative authority must review the responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(9) A copy of the entire report shall be sent to the Department upon completion of the investigation report.

(10) NOTIFICATION OF FINDINGS. Upon a determination of substantiated abuse or a rule violation, the Department must provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, the Department shall consider intent, knowledge, and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Department shall determine the licensee is responsible for the abuse include, but are not limited to, the following:

(i) Failure to provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct;

(ii) Failure to check for or act upon relevant information available from a licensing board;

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff;

(v) Failure to provide adequate oversight to residents;

(vi) Failure to allow sufficient time to accomplish assigned tasks;

(vii) Failure to provide adequate services;

(viii) Failure to provide adequate equipment or supplies; or

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible includes, but is not limited to:

(i) Intentional acts against a resident, including assault, rape, kidnapping, murder, or sexual, verbal, or mental abuse;

(ii) Acts contradictory to clear instructions from the facility, such as those identified in section (9)(b)(A) of this rule, unless the act is determined by the Department to be the responsibility of the facility;

(iii) Callous disregard for resident rights or safety; or

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the

individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

(i) The licensee;

(ii) Any person reported to have committed wrongdoing;

(iii) The complainant, if known;

(iv) The Long-term Care Ombudsman; and

(v) The local licensing authority.

(B) A copy of the written notice must be placed in the Department's facility complaint file.

(10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, and the residents' case managers and legal representatives.

(11) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(12) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local licensing authority. Individuals may purchase a photocopy upon requesting an appointment to do so.

(13) The Department and the local licensing authority shall not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0670 and:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency;

(b) Treat the names of the witnesses as confidential information; and

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses with confidential information deleted, must be available to the public at the local licensing authority office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SDSD 11-2001, f. 12-21-01, cert. ef. 1-1-02; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0455, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Investigations of potential elder abuse in nursing facilities

Adm. Order No.: APD 51-2014(Temp)

Filed with Sec. of State: 12-31-2014

Certified to be Effective: 1-1-15 thru 6-29-15

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Rules Amended: 411-085-0005, 411-085-0010, 411-085-0013, 411-085-0015, 411-085-0030, 411-085-0040, 411-085-0060, 411-085-0310, 411-085-0350, 411-085-0360, 411-085-0370, 411-089-0010, 411-089-0020, 411-089-0030, 411-089-0040, 411-089-0050, 411-089-0070, 411-089-0075, 411-089-0100, 411-089-0110, 411-089-0120, 411-089-0130, 411-089-0140

Subject: To implement House Bill 4151 (2014 Regular Session), the Department of Human Services (Department) is proposing to amend the rules for Nursing Facilities in OAR chapter 411, divisions 85 and 89 to:

Amend the definition of "sexual abuse" used by corrective action coordinators to determine enhanced civil penalties as required by HB 4151. Following the substantiation of alleged "abuse" in nursing facilities, this definition is used to determine the amount of an enhanced civil penalty the nursing facility corrective action applies in any given case.

Define role of "Office of Licensing and Regulatory Oversight (OLRO)" concerning the regulation of nursing facilities.

Amend definitions to be consistent with current Department terminology.

Amend program and division names throughout the rules to ensure current agency program names are correctly referenced.

Amend the amount of time local APD and AAA offices have to complete an abuse investigation report to ensure consistency with the HB 4151 requirement of completing investigations within120 days.

Make minor wording, formatting, punctuation, and grammatical adjustments to the rules.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-085-0005
Definitions

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, and 89:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent, or if the resident is not capable of consenting, spending resident funds for items or services from which the resident is unable to benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(3) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

(4) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.

(5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(6) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(8) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(9) "APD" means "Aging and People with Disabilities."

(10) "Assessment" means a written evaluation of a resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(11) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.

(12) "Certified Medication Aide" means "certified medication assistant" as defined in this rule.

(13) "Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.

(14) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(15) "Change of Operator" means "change of ownership" as defined in this rule.

(16) "Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include, but are not limited to:

(a) A change in the form of legal organization of the licensee;

(b) Transfer of the title to the nursing facility enterprise by the owner to another party;

(c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;

(d) If the licensee is a partnership, any event that dissolves the partnership;

(e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or

(f) Any other event that results in a change of the operating entity.

(17) "Control Interest" means "management" as defined in this rule.

(18) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.

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

(20) "Drug" has the same meaning set forth in ORS chapter 689.005.

(21) "Entity" means "Individual" as defined in this rule.

(22) "Establish a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(23) "Facility" means an establishment that is licensed and certified by the Department as a nursing facility.

(24) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or a residential care facility.

(25) "Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.

(26) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

(27) "Incident of Ownership" means:

(a) An ownership interest;

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(28) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(29) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality, including a municipal corporation.

(30) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(31) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes, but is not limited to, a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.

(32) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, any individual appointed by a court to manage the personal or financial affairs of a resident, or an individual or agency legally responsible for the welfare or support of a resident other than the facility.

(33) "Licensed Nurse" means a registered nurse or a licensed practical nurse.

(34) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(35) "Licensee" means the applicant to whom a nursing facility license has been issued.

(36) "Local Designee of the Department" means the local unit of the Department or the Area Agency on Aging.

(37) "Long Term Care Facility" means "nursing facility" as defined in this rule.

(38) "LPN" means "licensed practical nurse" as defined in this rule.

(39) "Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.

(40) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(41) "Management" means:

(a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or

(b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(42) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed as a nursing facility;

(c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms;

(d) A major alteration to an existing building;

(e) An addition to an existing building;

(f) A conversion in use; or

(g) Renovation or remodeling of an existing building.

(43) "NFPA" means "National Fire Protection Association".

(44) "Nurse Aide" means "nursing assistant" as defined in this rule.

(45) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(46) "Nursing Assessment" means evaluation of fluids, nutrition, bowel or bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.

(47) "Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.

(48) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(49) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides medical services, including nursing services, but excluding surgical procedures, and that provides care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that may not be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).

(50) "Nursing Facility Administrator" means an individual licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.

(51) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted thereunder.

(52) "Nursing Home" means "nursing facility" as defined in this rule.

(53) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.

(54) The "Office of Licensing and Regulatory Oversight (OLRO)" is the DHS office responsible for the licensing, regulation, survey, corrective action, and related policy development functions for the Nursing Facility, Community Based Care, Adult Foster Home, Intellectual and Developmental Disabilities, and Child Care Licensing Units.

(55) "Owner" means an individual with an ownership interest.

(56) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(57) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(58) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(59) "Physician" means an individual licensed under ORS chapter 677 as a physician.

(60) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(61) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(62) "Prescription" has the same meaning as set forth in ORS 689.005.

(63) "Public or Private Official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(c) Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;

(d) Individual who contracts to provide services to a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;

(h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;

(i) Senior center employee;

(j) Information and referral or outreach worker;

(k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;

(l) Firefighter or emergency medical technician;

(m) Legal counsel for a resident; or

(n) Guardian for, or family member of, a resident.

(64) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(65) "Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including, but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(66) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

(a) Whether abuse or other rule violation occurred;

(b) How abuse or other rule violation occurred; or

(c) Who was involved in the abuse or other rule violation.

(67) "Resident" means an individual who has been admitted, but not discharged from a facility.

(68) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(69) "Restorative Nursing" means "restorative services" as defined in this rule.

(70) "Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.

(71) "RN" means "registered nurse" as defined in this rule.

(72) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of a resident's independence.

(73) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation and there is no court-appointed individual, then a significant other means a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions they are not entitled to make on behalf of a resident.

(74) "Suspected Abuse" means reasonable cause to believe abuse may have occurred.

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

Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637, 441.650

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert.ef. 8-1-04; SPD 1-2008(Temp), f. 2-8-08, cert. ef. 3-1-08 thru 8-28-08; SPD 10-2008, f. & cert. ef. 8-28-08; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 5-2014, f. 3-31-14, cert. ef. 4-1-14; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0010
Issuance of License

(1) No person acting individually or jointly with any other person shall establish, conduct, maintain, manage, or operate a nursing facility without a license from the Department.

(2) Each nursing facility license issued by the Department applies only to person or persons named on the license. The license is not transferable or assignable. The license is valid only for the specific premises designated on the license and for the time period specified on the license.

(3) A license may not be issued for a new facility, an expanded facility, or a facility offering new services unless the Oregon Health Authority has issued a certificate of need for said facility or service, or has determined a certificate of need is not required.

(4) APPLICATION FOR INITIAL LICENSURE AND LICENSE RENEWAL.

(a) The application must be on a form or forms provided by the Department and must include all information requested by the Department including, but not limited to, identity and financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more or 10 percent of a lease agreement for the facility. Facilities applying for Medicaid, Medicare, or both Medicaid and Medicare certification are required by federal law to identify applicants representing a 5 percent or more interest.

(b) If the owner of the nursing facility business is a different entity from the operator of the nursing facility, an application for licensure is required from both the operator and the owner. Only one license fee is required. Each application must be signed and dated by a legally authorized representative of the entity submitting the application. The names of owners and operators shall appear on the license.

(c) The applicant must identify any person who has 10 percent incident of ownership, direct or indirect, in a pharmacy or in any business that provides services or supplies to nursing facilities. If any such person exists, the applicant must identify the person and the name and address of the pharmacy or business.

(d) The applicant must identify the number of beds the facility is presently capable of operating considering existing equipment, ancillary service capability, and the physical requirements as specified within OAR chapter 411, divisions 85-89. The number of beds requested to be licensed may not exceed the number identified on the license to be renewed unless prior approval has been issued by the Department or a certificate of need has been issued when required pursuant to ORS chapter 442.

(e) The applicant must include a floor plan showing the location of each bed and the dimensions and room number of each room in which a bed is located. The plan must also show the location of dining and activities areas, shower and tub rooms, toilet rooms, clean and dirty utility rooms, therapy service areas, laundry areas, and dietary service areas. After the first filing, plans need only be submitted when changes in the information required in this subsection occur or when requested by the Department.

(f) The applicant must include a copy of all leases, management, and ownership of the facility.

(g) The applicant must list all states in which the applicant or persons having a 10 percent or more incident of ownership in the facility currently are or previously have been licensed to provide long-term care.

(h) If a renewal is desired, the licensee must apply at least 45 days before the expiration date of the existing license.

(i) The license fee must accompany the application.

(j) If the applicant fails to provide complete and accurate information on the application, the Department may deny or revoke the license if the Department determines the missing or corrected information is needed to determine if a license shall be granted.

(k) An application is not considered to be complete until all requested information and signatures have been provided.

(l) Each application for a new license (excludes license renewal) must include a completed and signed credit and background check authorization form for the applicant and each person with 10 percent incident of ownership in the applicant.

(m) Applicants for license renewal must provide the Department with a completed and signed credit and background check authorization form for the applicant and each person with incident of ownership in the applicant, when required by the Department.

(n) Applications must state whether or not the applicant and persons with incident of ownership in the applicant, have ever been convicted of a crime associated with operation of a health care facility or agency under federal law or the laws of any state.

(o) Applicants must provide such other information and documentation as the Department may reasonably require for proper administration of these rules including, but not limited to, information about ownership interest in other business enterprises, if relevant.

(p) The Department shall issue the license or issue a denial of licensure within 60 days of receipt of the license fee, completed application, and after determination of substantial compliance with the on-site inspection.

(5) DEMONSTRATED CAPABILITY.

(a) Before issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing care in a manner consistent with the requirements of the rules in OAR chapter 411, divisions 85-89.

(b) The Department may consider the background and qualifications of any person owning 10 percent or more interest in the nursing facility operation when determining whether an applicant may be licensed.

(c) The Department may consider the applicant's history of compliance with Department rules and orders, including the history of compliance of each person with a 10 percent or more incident of ownership in the applicant.

(d) Any person with a past or present interest of 10 percent or more incident of ownership in any nursing facility operation shall be considered responsible for acts occurring during, and relating to, the operation of the nursing facility for the purpose of licensing.

(6) SEPARATE BUILDINGS. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same ownership or management.

Stat. Auth.: ORS 410.070, 441.025 & 441.060
Stats. Implemented: ORS 441.025 & 441.060
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SPD 26-2004, f. 7-30-04, cert.ef. 8-1-04; SPD 3-2012, f. & cert. ef. 4-10-12; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0013
New Applicant Qualifications

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds 10 percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership) must meet the following criteria:

(1) CRIMINAL HISTORY. Each applicant must complete a Criminal History Clearance conducted by the Department in accordance with OAR chapter 407, division 007. The Department conducts the fitness determination. If determined "unfit," applicants may appeal as described in OAR 407-007-0330.

(2) PERFORMANCE HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill or disabled persons and was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(b) Be free of incident of ownership history in any nursing facility in any state that was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(c) Be free of history of termination of licensure as a nursing facility administrator or health care provider during the past five years;

(d) Failure to demonstrate required performance history may result in the Department's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years;

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, or other costs necessary for facility operation, during the past five years;

(c) Have a record of good credit as evidenced by an OLRO credit check;

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement and other verifiable documentary evidence of fiscal solvency, documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered to be "liquid assets," but may be considered to be "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A joint escrow account with the Department;

(C) A performance bond; or

(D) Any other method satisfactory to the Department.

(e) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the provision of nursing facility care, the applicant must employ the services of a consultant with experience in the provision of nursing facility care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of the Department. Costs incurred for such consulting services are not an allowable cost for Medicaid reimbursement.

(5) DEMONSTRATION OF RIGHT TO PROPERTY AND BUSINESS. The applicant must demonstrate that they have the legal right to possess the nursing facility property and operate the nursing facility business. Examples include, but are not limited to:

(a) If purchasing the property, the applicant must include documentation demonstrating clear title and current right to possess the property; and

(b) If leasing the facility property, or planning to operate it under a management agreement, the applicant must provide all legal documents needed to demonstrate the right to possess the property and operate the business.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.025, 441.055 & 441.615
Hist.: SSD 8-1993, f. & cert. ef. 10-1-93; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0015
License Expiration, Termination of Operation, License Return

(1) EXPIRATION. Effective May 16, 2011, unless revoked or terminated earlier, or issued for a shorter specified period, each license to operate a nursing facility expires annually, following the date of issue.

(2) TERMINATION OF OPERATION. Except as otherwise provided in this rule, if facility operation is discontinued for any reason, the license shall expire. The licensee has appeal rights under ORS chapter 183.

(3) INACTIVE LICENSE.

(a) When the licensee proposes to replace an existing (original) licensed nursing facility with a new building, the Department may grant the licensee an inactive license for up to 24 months after closure of the original facility (departure of the last resident) under the following conditions:

(A) The existing facility may not meet the physical environment requirements for new construction in OAR chapter 411, division 087;

(B) The licensee must comply with the Oregon Health Authority's certificate of need process, including the physical environment requirements for new construction;

(C) The licensee must submit to the Department a written request for an extension to continue the license, an application for license renewal, and the license fee before the annual renewal date;

(D) The licensee must comply with plan review as described in OAR 411-087-0010 and all other applicable requirements; and

(E) The licensee's written request must include information that assures the Department that the new facility shall provide an improved quality of care that is needed in the community and is determined by the Department to be in the public's interest.

(b) The licensee must provide written notice of intent to apply for an inactive license at least 30 days before closure of the original building. This notice must be provided to the Department and every licensed nursing facility, assisted living facility, and residential care facility within 20 miles of the proposed new building site.

(c) The licensee must provide a minimum of two written progress reports to the Department regarding the status of the new building.

(A) The first report must be received by the Department between six and nine months after the original facility is closed.

(B) The second report must be received by the Department between 18 and 21 months after the original facility is closed.

(4) EXTENSION. If the licensee fails to open the new building within 24 months of the closure of the original facility, the Department may extend the inactive license for an additional 18 months. The licensee must submit written request to the Department for an extension before expiration of the inactive license. The following must be included in the request for extension:

(a) NOTICE TO NEARBY FACILITIES. A statement certifying that the licensee has made a reasonable attempt to provide written notice to each nursing, assisted living, and residential care facility within 20 miles of the site of the proposed facility of the intent to request an extension. Upon request, the Department shall provide a list of the names and addresses of all nursing, assisted living, and residential care facilities in the state.

(b) SITE PLAN. A completed site plan that has been submitted to the local jurisdiction (city or county planning agency).

(c) ARCHITECTURAL DRAWINGS. Working architectural drawings that have been stamped or prepared by a licensed architect.

(d) BUILDING SITE. Evidence that the land proposed for the new building is under control of the licensee.

(e) LOCAL JURISDICTION COMMUNICATION. Evidence of continued contact with the local jurisdiction.

(f) FINANCIAL COMMITMENT. Evidence of financial commitments towards completion of the project, including proof of lender commitments and cash on hand sufficient to complete the construction.

(g) CONSTRUCTION CONTRACTS. Construction contracts or other evidence showing the project shall be completed before the expiration of the extended inactive license.

(5) RETURN OF LICENSE. Each license certificate must be returned to the Department immediately upon issuance of a final order revoking or suspending the license. If a license is terminated voluntarily or involuntarily because operation has been discontinued, the license certificate must be immediately returned to the Department.

Stat. Auth.: ORS 410.070, 441.025 & 441.060
Stats. Implemented: ORS 441.025 & 441.060
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SDSD 3-2001, f. 2-14-01, cert. ef. 2-15-01; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 3-2012, f. & cert. ef. 4-10-12; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0030
Required Postings

(1) PUBLIC NOTICES:

(a) Content. Public notices required to be posted include:

(A) The most recent licensing and, if applicable, certification survey reports;

(B) The placard provided by the Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in any area where residents are admitted;

(C) The current week's menu and activities schedule;

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the Dietary Services Supervisor and the RN Care Manager(s) are also posted);

(E) Waivers received from the Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; and

(F) Any other notice relevant to residents or visitors required by state or federal law.

(b) Location. The facility shall designate a specific area where notices listed in subsection (1)(a) of this rule must be posted. The location shall be in an area that:

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and

(B) Provides sufficient space for prominent, conspicuous display of each notice.

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and any physician available for emergencies as required by OAR 411-086-0200 at each nursing station.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.067 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0040
Alternative Methods, Waivers

(1) APPLICATION. While all nursing facilities are required to maintain compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:

(a) Be submitted to the Department in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Describe the special circumstances relied upon to justify the waiver;

(d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate the proposed waiver is desirable to maintain or improve the quality of care for the residents, maintains or improves resident potential for self-direction and self-care, and is not going to jeopardize resident health and safety; and

(f) Identify the proposed duration of the waiver.

(2) APPROVAL PERIOD. Upon finding that the licensee has satisfied the conditions of this rule, the Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) REVOCATION. The Department may revoke any waiver or variance issued by the Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued may endanger, the health or safety of one or more residents.

(4) IMPLEMENTATION. The facility may implement a waiver only after written approval from the Department.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0060
Specialty Nursing Facilities

(1) APPLICATION. Facilities that have successfully obtained from the Oregon Health Authority a certificate of need for "specialty long-term care beds" pursuant to OAR 333-610 must make application to the Department for licensure as a "Specialty Nursing Facility" in accordance with OAR 411-085-0010.

(2) ISSUANCE OF LICENSE. Licenses shall only be issued to a Specialty Nursing Facility after written notification from the Oregon Health Authority that the facility is eligible for such licensure. The license issued shall state "Specialty Nursing Facility" and shall identify the type of residents and specialized services the facility is authorized to admit and retain.

(3) COMPLIANCE WITH RULES. Specialty Nursing Facilities are required to meet all Oregon Administrative Rules that apply to Nursing Facilities.

(4) ADMISSIONS. Facilities and distinct parts of facilities licensed as Specialty Nursing Facilities must only admit and provide services for residents consistent with the Certificate of Need issued by the Oregon Health Authority.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0310
Residents' Rights: Generally

The facility must protect, encourage, and assist the resident in exercising the rights identified in OAR 411-085-0300 – OAR 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:

(1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.

(2) Be fully informed, orally and in writing, in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, before or at the time of admission.

(3) Be fully informed, before or at the time of admission and during the resident's stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.

(4) Be fully informed of his or her total health status, including, but not limited to medical status. The resident must be informed of the right to choose his or her own physician and to be fully informed in advance of any

changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his or her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.

(5) Refuse any medication, treatment, care, or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment, and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

(8) Be transferred or discharged only in accordance with the Aging and People with Disabilities transfer and discharge rules in OAR chapter 411, division 088.

(9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.

(a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.

(b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment may have a significant adverse impact on the resident's medical or psychological status.

(c) Moving residents on the basis of source of payment is not just cause for intra-facility transfers.

(d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.

(10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.

(11) Be treated with consideration, respect, and dignity and assured complete privacy during treatment and when receiving personal care.

(12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened, and to have regular access to the private use of a telephone.

(13) Be provided privacy for visits when requested, including meetings with other residents and family groups.

(14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Aging and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(15) Promptly inspect all records pertaining to the resident.

(16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(17) Participate in social, religious, and community activities at the discretion of the resident.

(18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, the facility, or any person subject to the supervision, direction, or control of the facility, shall not retaliate by:

(a) Increasing charges or decreasing services, rights, or privileges;

(b) Threatening to increase charges or decrease services, rights, or privileges;

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or

(d) Abusing, harassing, or threatening to abuse or harass a resident.

(20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

(22) Receive care from facility staff trained to provide care that is specific to the resident's disease or medical condition.

(23) Receive a modified or special diet that meets the specific requirements of the resident's disease or medical condition.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.600, 441.610, 441.615 & 441.700

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 3-2008, f. & cert. ef. 3-6-08; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0350

Residents' Rights: Personal Funds

(1) RESIDENT HELD FUNDS. The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit personal funds with the facility.

(2) FACILITY HELD FUNDS.

(a) Resident Request. The facility must hold, safeguard, manage, and account for the personal funds of the resident when requested in writing. The resident must be fully informed of the facility's system for protecting personal funds. When the resident requests the facility hold such funds, the facility must ensure the request is in writing;

(b) Accounting System. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility. The system may allow resident funds to be pooled together, however, it must preclude any commingling of resident funds with facility funds;

(c) Report to Resident. The facility must provide a copy of the individual financial record to the resident no less often than quarterly and upon the request of the resident. The statement must include the following information:

(A) Identification number and location of the account in which the resident's personal funds have been deposited.

(B) The resident's account balance at the beginning of the statement period.

(C) A listing of each deposit and withdrawal, to and from the resident's account. Each withdrawal must include an explanation of the reason for the withdrawal (e.g., If money is requested by the resident, facility may document "resident request").

(D) The interest earned, if any, and the current interest rate.

(E) The ending balance.

(d) Resident Control of Funds. The facility must take all reasonable precautions to ensure the resident's funds are handled according to the resident's wishes. If the resident's wishes are unable to be determined, funds must be handled in accordance with the best interests of the resident;

(e) Resident Access to Funds. The facility must allow residents access to funds on weekdays, (Monday through Friday, excluding holidays) during business office hours, (no less than six hours per day) and at least two hours per day on all other days;

(f) Funds Under $50. The facility may hold up to $50 for each resident in a non-interest-bearing, petty cash fund. All resident funds held by the facility that are not in the petty cash fund must be deposited in an interest-bearing account as described in subsection (g) of this rule,

(g) Funds $50 and over.

(A) Whenever money held by the facility for a resident exceeds $50, the excess above $50 must, within 7 days of receipt, be deposited in the resident's interest-bearing account, unless the money is managed in a Trust and Agency Account held by the Department.

(B) If the interest-bearing account for residents is pooled, the facility must have a system that accurately and promptly allocates earned interest to the appropriate resident.

(h) SSI Resource Limit Exceeded. The facility must notify any resident receiving Medicaid benefits whenever his or her account reaches within $200 of the SSI resource limit for one person; and that, if the amount in the account and the value of the resident's non-exempt resources reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI;

(i) Death of Resident. Upon the death of a Medicaid or General Assistance resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within 10 business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed;

(j) Surety Bond. The licensee must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility. The amount of the bond must be sufficient to cover the highest amount of the account with resident funds, plus the petty cash funds, during the previous 12 months.

(3) CHANGE OF OWNERSHIP OR LICENSEE. At the time of a change of ownership or licensee, the new owner or licensee must ensure:

(a) Written Accounting of Funds. Each resident or delegate receives a written accounting of his or her funds held by the facility at the time of the change. A copy of the written accounting for each resident must be provided to the local APD or Type B AAA.

(b) Resident Wishes Respected. That the wishes of each resident regarding management of facility held funds is determined and documented (see OAR 411-070-0095 for Medicaid clients), and that funds held by the prior owner or licensee are transferred to the new owner or licensee, or to another party designated by the resident.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SDSD 9-2001, f. 11-30-01, cert. ef. 12-1-01; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0360
Abuse

(1) ABUSE IS PROHIBITED. The facility employees, agents, and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency:

(a) Physicians, including any resident physician or intern;

(b) Licensed practical or registered nurses;

(c) Employees of the Department, Area Agency on Aging, county health department, or community mental health program;

(d) Nursing facility employees or any individual who contracts to provide services in a nursing facility;

(e) Peace officers;

(f) Clergy;

(g) Licensed social workers;

(h) Physical, speech, or occupational therapists; and

(i) Family members of a resident, guardians, or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.

(a) The nursing facility administration must immediately notify the Department, local designee of the Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to the Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.

(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example, rape, murder, assault, burglary, kidnapping, or theft of controlled substances).

(c) The local law enforcement agency must be called if the offices of the Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available;

(a) Names, addresses, and phone numbers of alleged perpetrators, residents, and witnesses;

(b) The nature and extent of the abuse or suspected abuse, including any evidence of previous abuse;

(c) Any explanation given for the abuse or suspected abuse; and

(d) Any other information the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The facility licensee, employees, and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including, but not limited to, restricting otherwise lawful access to the facility or to any resident or, if an employee, to dismissal or harassment;

(b) The facility licensee, employees, and agents must not retaliate against any resident who is alleged to be a victim of abuse.

(c) Anyone who, in good faith, reports abuse or suspected abuse shall have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person shall have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to the Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.615, 441.630, 441.637, 441.640, 441.645 & 441.655
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-085-0370
Confidentiality

This rule applies to facility licensees, employees, and agents, to Department staff, and the staff of all Area Agencies on Aging.

(1) RESIDENTS. The names of residents and all documentation that may allow the identification of a resident must be kept confidential and are not accessible for public inspection.

(2) COMPLAINANTS, WITNESSES. The names and identity of complainants and witnesses referred to in Department complaint investigations must be kept confidential and are not accessible for public inspection.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.637 & 441.671
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0010
Inspections and Surveys

(1) Frequency. The Office of Licensing and Regulatory Oversight (OLRO) shall, in addition to any investigations conducted pursuant to complaints, conduct a general inspection of each facility to determine compliance with nursing facility laws on a schedule consistent with the survey schedule defined by the Centers for Medicare and Medicaid Services (CMS), and at such other times as the OLRO deems necessary,

(2) Content. The general inspection includes a review of resident care practices. Results of the review shall be summarized on the survey form.

(3) Documentation: A nursing facility shall maintain all written documentation required by Oregon law. Such written documentation shall be kept on the facility premises. When documents and records are requested by the OLRO, the facility shall make the requested materials available to the investigator or inspector for review and copying.

Stat. Auth.: ORS 410.070, 441.055 & 441.615
Stats. Implemented: ORS 441.087, 441.050, 441.615, 441.630, 441.690, 441.695 & 441.710
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0020
Sanctions, Generally

(1) Information collected during a visit by any OLRO, local APD, or Area Agency on Aging representative, regardless of the reason for the visit, may be used as a basis for any sanction imposed by the OLRO.

(2) The use of any one sanction by the OLRO does not preclude the implementation of any other sanctions for the same deficiencies.

(3) The OLRO may seek appropriate administrative or injunctive relief before the completion of an investigation or inspection if it appears a resident might otherwise be deprived of rights secured by federal or state law.

(4) If after an investigation or inspection the OLRO believes there is substantial evidence a violation has occurred or is occurring, the OLRO may seek, by administrative or judicial means, to obtain such remedial relief as may be appropriate, including voluntary compliance, contested case, and injunction proceedings.

Stat. Auth.: ORS 441.055, 441.615 & 441.070
Stats. Implemented: ORS 411.050, 441.615 & 441.710
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0030
Civil Penalties

(1) CONSIDERATIONS. In determining the amount of a civil penalty the Department shall consider:

(a) Any prior violations of statute or rule by the facility or licensee that relates to operation of a nursing facility;

(b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment, or supplies;

(c) The gravity of the violation, including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;

(d) The severity of the actual or potential harm caused by the violation, including whether the actual or potential harm included loss of life or serious physical or emotional injury;

(e) The facility's history of correcting violations and preventing recurrence of violations; and

(f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) SINGLE VIOLATION CIVIL PENALTIES. Violations of any requirement within any part of the following statutes, rules, or sections of the following rules are a violation that may result in a civil penalty after a single occurrence.

(a) Violations involving direct resident care, feeding, or sanitation involving direct resident care, including any violation of:

(A) OAR 411-085-0060 (Specialty Nursing Facilities);

(B) OAR 411-085-0200(2) (Facility Employees);

(C) OAR 411-085-0210 to 411-085-0220 (Facility Policies, Quality Assurance);

(D) OAR 411-085-0360 (Abuse);

(E) OAR 411-086-0010 to 411-086-0020 (Administrator, Director of Nursing Services);

(F) OAR 411-086-0040 (except section (3)) (Admission of Residents);

(G) OAR 411-086-0050 to 411-086-0060 (Day Care, Assessment, and Care Plan);

(H) OAR 411-086-0110 to 411-086-0150 (Nursing Services);

(I) OAR 411-086-0200 to 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary, and Pharmaceutical Services);

(J) OAR 411-086-0300 (except section (6)) (Clinical Records);

(K) OAR 411-086-0310 to 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings, and Equipment);

(L) OAR 411-087-0100(1)(a) and (c) (Repair and Cleanliness); or

(M) OAR 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio, including any violation of:

(A) OAR 411-086-0030 (except section (1)) (RN Care Manager); or

(B) OAR 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610, including:

(A) OAR 411-085-0300 to 411-085-0350 (Resident Rights);

(B) OAR 411-086-0040(3) (Advance Directives);

(C) OAR 411-086-0300(6) (Record Retention); or

(D) OAR chapter 411, division 088 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights) or any general or final order of the Department.

(3) CIVIL PENALTIES REQUIRING REPEAT VIOLATIONS. Violation of any Department rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections, or visits; and

(b) The Department prescribed a reasonable time for elimination of the violation at the time of, or subsequent to, the first citation.

(4) AMOUNT OF CIVIL PENALTY.

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than $500 for each day the violation occurs, unless otherwise provided by this section;

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than $500 per violation, unless otherwise provided by this section;

(c) Violation involving resident abuse that resulted in serious injury or death is subject to a civil penalty of not less than $500 nor more than $1,000, or as otherwise required by federal law (ORS 441.995(3) and ORS 441.715(1)(c));

(d) The Department shall impose a civil penalty of not less than $2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed $15,000 in any 90-day period.

(A) To impose this civil penalty, the Department shall establish:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of sexual contact between an employee of a nursing facility or a person providing services in the nursing facility and a resident of that facility, including, but not limited to, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct the licensee is responsible, to comply with applicable Oregon Administrative Rules.

(5) ADMINISTRATOR SANCTIONS - NURSING FACILITY CLOSURES. Any individual who is or was the administrator of a facility and fails or failed to comply with the requirements at OAR 411-085-0025(2)(d)(e)(f)(h), 411-085-0025(3)(a), or 411-088-0070(1)(g), (3)(d), or (4):

(a) Are subject to a civil monetary penalty as follows:

(A) A minimum of $500 for the first offense;

(B) A minimum of $1,500 for the second offense; and

(C) A minimum of $3,000 for the third and subsequent offenses.

(b) May be subject to exclusion from participation in any Federal health care program as defined in section 1128B(f) of the Patient Protection and Affordable Care Act; and

(c) Are subject to any other penalties that may be prescribed by law.

(6) PAYMENT TO BE CONSIDERED ADMISSION OF VIOLATION. Unless the Department agrees otherwise, for purposes of history of the facility, any payment of a civil penalty is treated by the Department as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid.

(7) All penalties recovered are deposited in the Quality Care Fund.

(8) NOTICE. The Department's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)-(f) and shall also include a statement that if the licensee fails to request a hearing within 10 days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(9) HEARING REQUEST.

(a) If the Department issues a notice of intent to impose a civil penalty, the licensee is entitled to a hearing in accordance with ORS chapter 183.

(b) A request for a hearing must be in writing and must be received by the Department within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and must affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Department may extend the time allowed for submission of the admission or denial and affirmative defenses for up to 30 calendar days.

(10) DEFAULT ORDER. If a hearing is not timely requested, if the licensee withdraws a hearing request, or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Department's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715 & 441.990

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 5-2014, f. 3-31-14, cert. ef. 4-1-14; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0040

Nursing Facility License Denial, Suspension, Revocation

(1) Basis for Denial, Revocation — Mandatory. A license shall be suspended or revoked, or both, or denied if a certificate of noncompliance is

issued by the State Fire Marshal, Deputy, or other approved representative pursuant to ORS Chapter 479.

(2) Basis for Denial or Revocation — Discretionary. A license may be denied or revoked by the OLRO when it finds the licensee or applicant:

(a) Failed to comply with nursing facility law such that the health, safety, or welfare of residents is or was jeopardized;

(b) Failed to substantially comply with nursing facility law during any three inspections within a five year period. For the purpose of this rule, "inspection" means an on-site visit to the facility by the OLRO for licensing or certification;

(c) Has been convicted, under any state or federal law, of a felony or of a misdemeanor associated with the operation of a health care facility or agency within the preceding ten years;

(d) Had an incident of ownership of ten percent or greater in or had a management or control interest in any facility in any state when the facility was terminated from participation in the Medicaid or Medicare program, or at a time when the facility voluntarily terminated participation in the Medicaid or Medicare program during any state or federal termination process;

(e) Had an incident of ownership of ten percent or greater in any facility in any state that failed to reimburse any state or the federal government for Medicaid or Medicare overpayments on a timely basis within the preceding five year period;

(f) Had an incident of ownership of ten percent or greater or a management or control interest in a health care facility or agency whose license was involuntarily suspended, revoked, or not renewed within the preceding five years;

(g) Had a nursing home administrator's license revoked, suspended, or not renewed in any state, excluding revocation based on failure to pay license fee or failure to maintain required continuing education requirements when not serving as an administrator, within the preceding five year period;

(h) Provided false, incorrect, or misleading information to the OLRO on the license application form;

(i) Provided false, incorrect, or misleading information to the Department regarding care of residents, facility finances, or resident funds;

(j) Failed to provide workers' compensation coverage for health care facility employees when required by state law in any state;

(k) Permitted, aided, or abetted any illegal act that had a significant adverse impact on resident health, safety, or welfare within the preceding five year period;

(l) Had an incident of ownership of ten percent or greater in any health care facility in any state at a time when the facility was denied an operating license, excluding denial based upon absence of bed need;

(m) Demonstrated fiscal instability within the preceding five years and such instability relates to the licensee or applicant's ability to provide care or operate a facility, or both provide care and operate a facility. Examples of fiscal instability include, but are not limited to, experiencing more than one instance of any of the following events or experiencing more than one of the following events:

(A) Failure to compensate employees in a timely manner;

(B) Failure to maintain, in any facility, an adequate inventory of medical supplies, personal supplies, or food;

(C) Failure to promptly pay any judgments, taxes, warrants, or other liens;

(D) Failure to pay utility bills or other bills related to the operation or maintenance of any facility, excluding failure to pay when the facility has a clear basis to dispute the billing; or

(E) A poor credit rating.

(n) Has demonstrated fiscal instability within the past five years by having experienced a history of poor credit or poor financial management; or

(o) Has failed to pay a civil penalty imposed by the OLRO.

(3) Notice of Intent to Revoke or Deny. The OLRO's notice of its intent to deny or revoke a nursing facility license shall include:

(a) A statement that the licensee or applicant has a right to a contested case hearing or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statute and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) A statement that the licensee or applicant is entitled to be represented by counsel and to respond and present evidence and argument on all issues involved;

(f) A statement that the record of the proceeding to date, including information in the OLRO's file or files on the subject of the revocation or denial of the license, automatically becomes part of the contested case record upon default for purposes of proving the OLRO's prima facie case; and

(g) A statement that if the licensee or applicant fails to request a hearing within 21 days of the date the notice of revocation was received, or within 60 days of the date the notice of denial was received, whichever is applicable, the licensee or applicant shall have waived the right to a hearing.

(4) Informal Conference. When the OLRO issues a notice of intent to revoke or deny a license, the licensee or applicant shall be entitled to an informal conference to respond to the notice. The conference shall be held before a person authorized to issue the order or to make recommendations regarding issuance of the order. A request for an informal conference must be received in writing by the OLRO within ten days of the date the notice of the intent to revoke or deny the license was received by the licensee or applicant. If the licensee or applicant fails to submit a timely request for a conference, the licensee or applicant shall have waived the right to the conference.

(5) Hearing:

(a) Right to Hearing. When the OLRO issues a notice of intent to revoke or deny a license, the licensee or applicant shall be entitled to a contested case hearing in accordance with the provisions of ORS Chapter 183;

(b) Request for Hearing. A request for hearing must be in writing and must be received by the OLRO within:

(A) 21 days of the date the licensee received the notice of revocation; or

(B) 60 of the date the applicant received the notice of denial of licensure.

(c) Date of Hearing. The hearing shall be held within 60 days of the request for hearing unless the OLRO and the licensee or applicant agree to a later date;

(d) Continued Operation Prohibited. A facility may not continue operation if the facility license is immediately suspended because of serious and immediate danger to resident health or safety pursuant to OAR 411-089-0040(2).

(6) Default Order. If the licensee or applicant fails to request a contested case hearing within the prescribed time period, withdraws a previous hearing request, or fails to appear at a scheduled hearing, the OLRO may enter an order denying or revoking the license by default. In the event of a default, the OLRO's files on the subject of revocation or denial automatically become part of a contested case record for the purposes of proving the OLRO's prima facie case.

(7) Emergency Suspension Order:

(a) When the Department finds a serious and immediate threat to resident health and safety exists, the OLRO may immediately suspend a nursing facility license. An emergency suspension order must be in writing. The order may be issued without prior notice to the licensee and without prior opportunity for a contested case hearing;

(b) Except where the threat to residents is so imminent that the OLRO determines that pre-suspension notice is not practical, the OLRO must provide the licensee with a pre-suspension notice and an opportunity to object before issuing an emergency suspension order. The pre-suspension order shall:

(A) Describe generally the acts of the licensee or circumstances that are grounds for an emergency suspension order under this rule, or both;

(B) Describe generally the reasons why the acts of the licensee or the circumstances seriously and immediately endanger resident health and safety, or both; and

(C) Identify a person whom the licensee may contact at the OLRO who is authorized to make recommendations regarding issuance of the order.

(c) If a pre-suspension notice is issued, the licensee shall be entitled to an immediate opportunity to respond to the notice before an authorized person issues the order or makes recommendations regarding issuance of the order. The emergency suspension order may be issued at any time thereafter;

(d) When an emergency suspension order is issued, the OLRO must serve the order on the licensee either personally or by registered or certified mail. The order shall include the following statements:

(A) The licensee's right to a hearing, or a statement of the time and place of the hearing;

(B) The authority and jurisdiction under which the hearing is to be held;

(C) A short plain statement of the matters asserted or charged;

(D) A reference to the particular sections of the statutes and rules involved;

(E) That the licensee may elect to be represented by counsel and may respond and present evidence and argument on all issues involved;

(F) That the licensee has a right to demand a hearing, if requested, be held as soon as practical;

(G) That if the demand for a hearing is not received by the OLRO within 90 days of the date of the emergency suspension order, the licensee shall have waived its right to a hearing under ORS Chapter 183;

(H) The effective date of the emergency suspension order;

(I) Findings of the specific acts or omissions of the licensee that are the grounds for the suspension, and the reasons the acts or omissions seriously and immediately threaten the health and safety of the residents; and

(J) That the OLRO may combine the hearing on the emergency suspension order with any other OLRO proceeding affecting the license. The procedures for the combined proceeding shall be those applicable to the other proceeding affecting the license.

(e) If a timely request for a hearing is received, the OLRO must hold the hearing as soon as practical. At the hearing the OLRO shall consider the facts and circumstances, including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to resident health and safety; and

(B) Whether the circumstances at the time of the hearing justify confirmation, alteration, or revocation of the order.

(8) License Expiration. If the OLRO determines a license has expired due to the facility's discontinued operation, the licensee has a right to an informal conference under section (4) of this rule and a hearing under section (5) of this rule. The OLRO may issue a default order pursuant to section (6) of this rule.

Stat. Auth.: ORS 410.070, 441.030, 441.055 & 441.615
Stats. Implemented: ORS 441.030 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0050
Restriction of Admissions

(1) Purpose. The purpose of this rule is to protect nursing facility residents and prospective residents from threats to their health, safety, and welfare, and to help ensure the attention of facilities with serious deficiencies is directed toward correcting those deficiencies.

(2) Basis for Admission Restriction. When the Department finds an immediate threat to resident health and safety, the OLRO may order an immediate restriction of admissions, or may immediately restrict the number or type of admissions at the facility. An Admission Restriction Order shall be in writing and may be issued without prior notice to the licensee and without an opportunity for a contested case hearing:

(a) In determining whether to order a restriction of admission under this rule, the OLRO shall consider:

(A) The needs of the residents and prospective residents;

(B) The severity of the threat to current and prospective residents; and

(C) The history of the care provided by the licensee.

(b) For the purposes of this rule, an immediate threat to resident health and safety may exist when a facility lacks adequate alarm systems including, but not limited to, call bells, fire or door alarms, or any other means to protect against a threat to resident health and safety;

(c) For the purposes of this rule, an immediate threat to resident health and safety exists when:

(A) The Department finds a pattern of:

(i) Failure to assess or take action to prevent or treat decubitus ulcers, weight loss, infection, dehydration or other changes in the physical condition of residents;

(ii) Failure to follow physician's orders, including failure to correctly administer medications; or

(iii) Abuse as defined by ORS 441.630, or preventable injuries.

(B) The Department finds any other condition or combination of conditions exist that in the opinion of the Department, constitute an immediate threat to resident health and safety, or a potential threat to new residents.

(3) Impending Admission Restriction Notice. Except where the threat to residents is so imminent that the OLRO determines pre-restriction notice is not practical, the OLRO must provide the licensee with a pre-restriction notice and an opportunity for an informal conference at least 48 hours before issuing an Admission Restriction Order. The Notice of Impending Restriction of Admission may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person in charge at the facility. When the notice is delivered orally, the OLRO shall subsequently provide written notice to the licensee by registered or certified mail. The pre-restriction notice shall:

(a) Describe generally, the acts or omissions of the licensee and the circumstances which led to the finding that an immediate threat to resident health and safety exists at the facility;

(b) Describe generally, why the acts or omissions and the circumstances create an immediate threat to resident or prospective resident health and safety;

(c) Identify a person at the OLRO whom the licensee may contact who is authorized to enter the Admission Restriction Order or to make recommendations regarding issuance of an order; and

(d) Specify the date and time the Admission Restriction Order takes effect.

(4) Informal Conference. If an informal conference is requested, the conference shall be held at a location designated by the OLRO. If determined to be appropriate by the OLRO, the conference may be held by telephone:

(a) With Pre-Admission Restriction Notice. If a pre-admission restriction notice is issued, the licensee shall be provided with an opportunity for an informal conference to object to the OLRO's proposed action. The Admission Restriction Order may be issued at any time after the informal conference;

(b) Without Pre-Admission Restriction Notice. If an Admission Restriction Order is issued without prior notice, the licensee may request an immediate informal conference to object to the OLRO's action.

(5) Admission Restriction Order. When an Admission Restriction Order is issued, the OLRO shall serve the order on the licensee either personally or by registered or certified mail. The order shall include the following statements:

(a) The licensee's right to a hearing or a statement of the time and place of the hearing;

(b) The authority and jurisdiction under which the hearing is being held;

(c) A reference to the particular sections of the statute and rules involved;

(d) The effective date of the restriction;

(e) A short and plain statement of the nature of the matter asserted or charged;

(f) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee shall notify the OLRO;

(g) That the licensee has the right to demand a hearing, if requested, be held as soon as practical;

(h) That if a demand for hearing is not received by the OLRO within 90 days of the date of the notice of the Admission Restriction Order, the licensee shall have waived the right to a hearing under ORS Chapter 183;

(i) Findings of specific acts or omissions of the licensee are grounds for the admission restriction, and the reasons these acts or omissions constitute an immediate and serious threat to the health and safety of the residents; and

(j) That the OLRO may combine the hearing on the Admission Restriction Order with any other OLRO proceeding affecting the licensee. The procedures for the combined proceeding shall be those applicable to the other proceedings affecting the license.

(6) Posting of Admission Restriction Order. A licensee who has been ordered to restrict admissions to a facility shall immediately post a "Restriction of Admissions Notice" on both the inside and outside faces of each door of the facility through which any person may enter or exit the facility. Such public notices shall be provided by the OLRO. The notices shall not be removed, altered, or obscured until the restriction has been lifted by the OLRO. Removal of the notice without the OLRO's authorization is a Class C misdemeanor.

(7) Hearing:

(a) Right to Hearing. If the OLRO issues an Admission Restriction Order, the licensee is entitled to a contested case hearing pursuant to ORS Chapter 183;

(b) Hearing Request. The request for a hearing must be received within 90 days of the Admission Restriction Order;

(c) Date of Hearing. When a timely request for hearing is received, the hearing must be held as soon as practical, but not later than 30 days after the request for hearing, unless the OLRO and the licensee agree to a later date;

(d) At the hearing, the OLRO shall consider the facts and the circumstances including, but not limited to:

(A) Whether at the time of the issuance of the restriction there was probable cause from evidence available to the OLRO to believe there were grounds for the Admission Restriction Order;

(B) Whether the acts or omissions of the licensee posed an immediate threat to resident health and safety;

(C) Whether changed circumstances, including implementation of effective systems to help ensure deficiencies causing the restriction do not recur, eliminate the need for continuing the restriction; and

(D) Whether the agency followed the appropriate procedures in issuing the restriction.

(8) Re-inspection.

(a) Request for Re-inspection. When the licensee determines the circumstances causing the restriction no longer exist, and that effective systems are in place to help ensure similar deficiencies do not recur, the licensee may make written request to the OLRO for a re-inspection. The Department must conduct the re-inspection within 15 working days following receipt of the written request.

(b) If the Department finds there is no longer an immediate threat to resident health and safety, and finds effective systems are in place to ensure similar deficiencies do not recur, the restriction must be lifted. The OLRO must notify the facility by telephone of the decision to lift or not lift the restriction within five working days from the completion of the re-inspection. Telephone notification must be followed by written notification;

(c) If the Department determines an immediate threat to resident health and safety continues to exist after a re-inspection, the admission restriction is not lifted and the Department is not obligated to re-inspect again for at least 45 days. A decision not to rescind the Admission Restriction Order shall be given to the licensee in writing and the licensee shall be informed of the right to a contested case hearing pursuant to ORS Chapter 183. Nothing in this rule is intended to limit the Department's authority to visit or inspect the facility at any time.

(9) Exceptions to Admission Restriction Order. While an Admission Restriction Order is in place, the OLRO, in its sole discretion, may authorize the facility to admit former residents with a right of return or right of readmission. The OLRO, in its sole discretion, may also authorize the facility to admit new residents for whom the OLRO determines that alternate placement is not feasible.

Stat. Auth.: ORS 410.070, 441.030, 441.055 & 441.615
Stats. Implemented: ORS 441.030 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0070
Facility Fund

(1) Moneys in the Facility Fund are appropriated to the Department to pay for the reasonable expenses of a trustee or temporary manager.

(2) BASIS FOR APPOINTMENT.

(a) A trustee may be appointed when a court finds the health and welfare of facility residents are in jeopardy pursuant to ORS 441.281.

(b) A temporary manager may be appointed by the Department, with consent of the licensee, if the Department determines the health or safety of facility residents is in jeopardy pursuant to OAR 411-089-0075.

(3) LICENSEE REPAYMENT TO FACILITY FUND. When the Department is required to utilize the Facility Fund to meet expenses of a trustee or temporary manager, the amount used shall constitute a loan to the facility and shall be repayable to the Facility Fund.

(4) FACILITY FUND FEE ASSESSMENT.

(a) Licensees shall pay an annual fee that does not exceed the annual license fee until the Facility Fund balance reaches $750,000.

(b) When the Facility Fund balance reaches $750,000, annual fee collection shall be discontinued.

(c) When the Facility Fund balance falls below $600,000, annual fee collection shall be reinstituted.

(5) ALLOWABLE COST. The facility payment described in section (4)(a) of this rule shall be considered an allowable cost.

Stat Auth: ORS 441.341, 441.615, 441.637, 441.710, 441.715, & 441.990
Stats Implemented: ORS 441.301, 441.303, and 441.336
Hist.: SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0075
Temporary Manager

(1) APPOINTMENT. The Department, with the consent of the licensee, may appoint a temporary manager to assume control of the day-to-day operation of the facility in accordance with Oregon Laws 2009, chapter 539, sections 14 through 18. The appointment may be for a period not to exceed six months.

(2) CRITERIA. A temporary manager may be appointed if the Department determines the health or safety of residents in the facility are, or in the immediate future shall be, in jeopardy based upon:

(a) The licensee's unwillingness or inability to comply with Department rules in the operation of the facility;

(b) The imminent insolvency of the facility;

(c) The Department's revocation or suspension of the license of the facility; or

(d) The Department's determination the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

(3) DUTIES AND POWERS. The temporary manager has all of the duties and powers, as agreed upon between the Department and the licensee, that are necessary to ensure the safety and well-being of the residents and the continued operation of the facility.

(4) QUALIFICATIONS. In order to qualify for appointment as temporary manager, the prospective appointee must:

(a) Be familiar with the Department's rules for the operation of the facility to be served;

(b) Be familiar with the needs of the resident population in the facility to be served; and

(c) Have a demonstrated history (five year minimum) of operating and managing a similar facility in substantial compliance with Department rules.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990
Hist.: SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0100
Complaint Intake, Investigation

(1) Complaint Intake. The local APD or AAA office receiving a complaint shall ask questions to obtain as much of the information requested on the APD Complaint Intake Form as possible. The local APD or AAA office shall have at least one person designated and available to receive complaint calls throughout the work day.

(2) Complaint Investigation.

(a) All Complaints Investigated. The Department shall ensure all complaints, including anonymous complaints, received regarding violation of nursing facility laws are investigated.

(b) Multiple Problems. If the complaint alleges more than one problem, each allegation of abuse or another rule violation shall be treated as a separate complaint, and shall be given a separate finding. This is not intended to require a separate status report or complaint investigation report for each allegation.

(c) Complainant Interview. The APD or AAA office representative shall interview the complainant immediately and, as necessary, during the investigation.

(d) Accompany Investigator. The investigator shall ask if the complainant, a designee, or both wish to accompany the investigator to the site. The purpose of allowing the complainant or a designee to accompany the investigator is to identify individuals and circumstances relevant to the complaint. If someone is to accompany the investigator, the investigator shall notify such party of the time and allow the party to accompany the investigator during the site visit.

(e) Timeframe to Begin Investigation. The investigations shall be initiated as follows:

(A) If the complaint alleges a resident's health or safety is in imminent danger or the resident has recently died, been hospitalized, or been treated in an emergency department, the on-site investigation shall begin within two hours of the complaint.

(B) If the complainant alleges circumstances that may result in abuse and the circumstances may place a resident's health or safety in imminent danger, the on-site investigation shall begin before the end of the first working day following receipt of the complaint.

(C) All other complaint investigations shall begin and be completed within 90 days following receipt of the complaint.

(f) Prior Notification Prohibited. Neither the OLRO nor the local APD or AAA office shall contact the facility before the on-site investigation.

(g) Facility Visit. The investigation shall include at least one unannounced visit to the facility. Upon arrival at the facility, the investigator shall announce his or her presence to the administrator or other person designated to be in charge. The investigator shall explain the purpose of the visit, unless the investigator has reason to believe that disclosing the purpose of the visit would impede the investigation.

(h) Witness Interview. Reasonable effort shall be made to interview all possible witnesses, including alleged perpetrators (if any), the involved residents and any other persons, including other residents, identified by any source as having personal knowledge about any allegations.

(A) Investigators have the authority to conduct the interview in private unless the witness expressly makes an unsolicited request that a third party be present.

(B) The investigator shall obtain the mailing address of the alleged perpetrator.

(C) If the investigator is unable to interview a witness identified by the complainant, the complainant shall be notified before the investigation is concluded.

(i) Investigation Format. In addition to interviews, the investigator shall make personal observations of physical circumstances and review any documentation, including clinical records. The facility shall promptly provide all requested documentation that is available, for review and copying.

Stat. Auth.: ORS 410.070, 441.055 & 441.637
Stats. Implemented: ORS 441.637 & 441.650
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0110
Initial Status Report (Abuse Complaints Only)

(1) Initial Status Report for Abuse Investigations (Local APD or AAA Office). Except in cases where the investigation is part of a general inspection pursuant to federal law, the local APD or AAA office shall complete an Initial Status Report for all abuse investigations within two working days of the start of the investigation.

(2) Content. The Initial Status Report shall include:

(a) A summary of the complaint identifying each alleged incident or problem. The Initial Status Report shall not include names of residents, complainants, or other people interviewed during the investigation;

(b) The status of the investigation:

(c) Whether the complaint was filed at the direction of facility administration:

(d) A determination of whether action to protect the residents is needed and whether the facility must take action:

(e) The name and telephone number of the investigator:

(f) The projected date the Complaint Investigation Report must be completed; and

(g) A statement that the Complaint Investigation Report is available upon request after the OLRO issues a Letter of Determination.

(3) Distribution. The Initial Status Report shall be provided either in person or by mail to the following individuals as soon as practical, but no later than two working days after its completion:

(a) The complainant, unless the complainant waives the requirement;

(b) If the complaint involves a specific resident or residents, to the residents or persons designated to receive information concerning the residents;

(c) A representative of the Long Term Care Ombudsman, upon request:

(d) The facility; and

(e)The OLRO.

(4) Availability of Initial Status Report. Upon completion, the Initial Status Report shall be placed in the local APD or AAA facility files and available for public inspection.

Stat. Auth.: ORS 410.070, 441.055 & 441.637
Stats. Implemented: ORS 441.637 & 441.650
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0120
Complaint Investigation Report (Local SPD/AAA Office)

(1) Report Required. The investigator shall write a complaint investigation report after each investigation is completed.

(2) Content. The complaint investigation and the findings of the investigation shall be summarized on the Complaint Investigation Report Form. The Form shall not include the names of any resident, complainant, or persons interviewed. The investigation report shall include:

(a) The nature of the allegations;

(b) The investigator's personal observations relating to relevant evidence, including the dates and times of each incident (as appropriate);

(c) A summary of the documents reviewed;

(d) A summary of each interview.

(e) The investigator's findings regarding the incident or problem alleged in each allegation; and

(f) The factual basis for the finding.

(3) Investigator's Conclusions. For each alleged wrongdoing, the investigator shall prepare a separate evaluation and written conclusion. The conclusion shall be:

(a) The alleged wrongdoing is substantiated;

(b) The alleged wrongdoing is not substantiated; or

(c) The investigator is unable to determine whether the alleged wrongdoing is substantiated or not substantiated because necessary, relevant information is unable to be obtained; or following a complete investigation, a reasonable person is unable objectively to conclude whether it was likely the wrongdoing occurred.

(4) Timeframe for Completion Processing (Local APD or AAA Office).

(a) If a complaint alleges abuse, the complaint report shall be completed within five working days after the investigation is completed, but not later than 60 days after receipt of the complaint.

(b) All other complaint investigation reports shall be completed within 90 days of the receipt of the complaint.

(c) Investigation reports shall be sent to the OLRO promptly upon completion.

Stat. Auth.: ORS 410.070, 441.055 & 441.637
Stats. Implemented: ORS 441.637, 441.650 & 441.676
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0130
Division Findings for Complaint Investigations (Central Office)

OLRO Review. The OLRO shall review the Complaint Investigation Report and any evidence submitted with the report.

(1) OLRO Determination. The OLRO shall review the Complaint Investigation Report and shall determine for each alleged violation:

(a) There is "Substantiated abuse," which means a reasonable person is able objectively to conclude it is more likely than not abuse occurred, including identification of rule violated;

(b) There is "Substantiated, non-abuse," which means a reasonable person is able objectively to conclude it is more likely than not a rule violation, other than abuse, occurred, including identification of rule violated;

(c) Is "Unsubstantiated," which means a reasonable person is able objectively to conclude it is unlikely any rule violation occurred; or

(d) Is "Unable to Substantiate," which means an investigation is not completed because necessary, relevant information is unable to be obtained; or that following a complete investigation, a reasonable person is unable objectively to conclude whether it was more or less likely a rule violation occurred.

(2) If the OLRO determines there is substantiated abuse, the OLRO shall determine whether the facility, or an individual, or both, were responsible. In determining responsibility, the OLRO shall consider intent, knowledge, ability to control, and adherence to professional standards, as applicable.

(a) Facility Responsible. Examples of when the OLRO shall determine the facility is responsible for the abuse include, but are not limited to the following:

(A) Failure to provide minimum staffing in accordance with OAR 411-086-0100(2), without reasonable effort to correct;

(B) Failure to check for, or act upon, relevant information available from a licensing board;

(C) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(D) Failure to adequately train or orient staff;

(E) Failure to provide adequate supervision of staff or residents, or both;

(F) Failure to allow sufficient time to accomplish assigned tasks;

(G) Failure to provide adequate services;

(H) Failure to provide adequate equipment or supplies; or

(I) Failure to follow orders for treatment or medication.

(b) Individual Responsible. Examples of when the OLRO shall determine an individual is responsible shall include, but are not limited to:

(A) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;

(B) Acts contradictory to clear instructions from the facility, unless the act is determined by the OLRO to be caused by a "facility problem" such as those identified in paragraph (2)(b)(A) of this rule:

(C) Callous disregard for resident rights or safety; or

(D) Intentional acts against a resident's property (e.g., theft, misuse of funds).

(c) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the

individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

Stat. Auth.: ORS 410.070, 441.055 & 441.637
Stats. Implemented: ORS 441.637, 441.650, 441.665 & 441.677
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

411-089-0140
Letters of Determination

Within 60 days of receipt by the OLRO of the investigation report, the OLRO shall issue a letter of determination.

(1) CONTENT. The letter of determination shall:

(a) Explain the nature of each allegation;

(b) Include the date and time of each occurrence;

(c) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or unable to substantiate;

(d) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(e) For each substantiated allegation of abuse, explain the OLRO's determination of responsibility;

(f) Include a copy of the complaint investigation report;

(g) State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and

(h) Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(2) APPEAL RIGHTS, NURSING ASSISTANT. The letter of determination, in cases of substantiated abuse by a nursing assistant, shall explain the following:

(a) The OLRO's intent to enter the finding of abuse into the Nursing Assistant Registry;

(b) The nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days;

(c) The Nursing Assistant Registry;

(d) The nursing assistant has 10 days to respond in writing with different or additional information, 30 days to request in writing a contested case hearing as provided in ORS 183.411 to 183.470, and the consequences of failure to respond; and

(e) If the opportunity to request a contested case hearing expires without a request for hearing by the nursing assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(3) DISTRIBUTION.

(a) The letter of determination shall be distributed to the facility, the complainant (if known), and the local APD or AAA office;

(b) The letter of determination shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of this rule;

(c) The letter of determination shall also be mailed to any health-related board or agency that certified or licensed an individual determined to be responsible for abuse. However, if the party determined to be responsible is a nursing assistant, the letter may not be mailed to the State Board of Nursing until the nursing assistant has exhausted all his or her appeal rights; and

(d) A copy of the letter of determination shall be placed in the OLRO's facility complaint file.

(4) REVISION.

(a) The OLRO may reinvestigate a complaint, issue a revised letter of determination, or both if the OLRO determines further information provided by the complainant, accused individual, or facility merits such action.

(b) If the OLRO issues a revised letter of determination, the letter shall be distributed to all individuals identified in section (3) of this rule.

(5) FAILURE TO REQUEST HEARING OR TO APPEAR.

(a) If the nursing assistant fails to request a contested case hearing in writing within 30 days of the letter of determination, or if the nursing assistant scheduled to attend the hearing fails to attend, the OLRO shall affirm the letter of determination and notify the State Board of Nursing of OLRO's finding. The abuse finding shall be entered into the Nursing Assistant Registry.

(b) If the nursing assistant is scheduled to appear at a contested case hearing, but fails to attend at the scheduled time, or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to a hearing. The hearing may be rescheduled if:

(A) A written request to reschedule the hearing is received by the OLRO within 10 days after the scheduled hearing; and

(B) The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing before the hearing were beyond the control of the nursing assistant.

(6) JUDICIAL REVIEW. The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review pursuant to ORS 183.482. This notice shall accompany or be incorporated within the OLRO's final order regarding the nursing assistant's responsibility for abuse.

Stat. Auth.: ORS 410.070, 441.055 & 441.637
Stats. Implemented: ORS 441.637 & 441.677
Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; Administrative correction, 6-24-99; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Residential Care and Assisted Living Facilities
Adm. Order No.: APD 1-2015
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Rules Amended: 411-054-0005, 411-054-0012, 411-054-0090, 411-054-0093, 411-054-0200, 411-054-0300
Subject: The Department of Human Services (Department) is permanently updating the rules for residential care and assisted living facilities in OAR chapter 411, division 054 to comply with changes in the building codes in regards to physical building structure, initial licensing requirements, and Fire and Life safety. The rules also need to be amended to comply with direction from Centers for Medicare and Medicaid Services (CMS) regarding locked resident unit doors for residential care facilities (RCF). Minor grammar, punctuation, and wording adjustments were made to all of the rules as well.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-054-0005
Definitions

For the purpose of these rules, the following definitions apply:

(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, health, and safety. Activities consist of eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(4) "Administrator" means the individual who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.

(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(6) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(7) "APD" means "Aging and People with Disabilities".

(8) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.

(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a 5 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(9) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to

provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect;

(b) Monitoring; and

(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(10) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(11) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC) and their reference codes and standards.

(12) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker.

(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.

(14) "Change of Condition — Short Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(15) "Change of Condition — Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

(f) Significant unplanned weight loss;

(g) Pattern of refusing to eat;

(h) Level of consciousness change; and

(i) Pressure ulcers (stage 2 or greater).

(16) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(17) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

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

(19) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.

(20) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration;

(b) Resident-focused activities;

(c) Assistance with activities of daily living;

(d) Supervision and support of residents; and

(e) Serving meals, but not meal preparation.

(21) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.

(22) "Director" means the Director of the Department's Licensing and Regulatory Oversight, or that individual's designee. The term "Director" is synonymous with "Assistant Director".

(23) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade, that renders the licensee unable to operate the facility or makes the facility uninhabitable.

(24) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(25) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(26) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.

(27) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.

(28) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division.

(29) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(30) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(31) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(32) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(33) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(34) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(35) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(36) "Major Alteration":

(a) Means:

(A) Any structural change to the foundation, floor, roof, exterior or load bearing wall of a building;

(B) The addition of floor area to an existing building; or

(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.

(b) Does not include cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floor rings, or casework).

(37) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(38) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(39) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).

(a) Modified special diets include, but are not limited to:

(A) Small frequent meals;

(B) No added salt;

(C) Reduced or no added sugar; and

(D) Simple textural modifications.

(b) Medically complex diets are not included.

(40) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed;

(c) A major alteration to an existing building; or

(d) Additions, conversions, renovations, or remodeling of existing buildings.

(41) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and OAR chapter 851.

(42) "Owner" means an individual with an ownership interest.

(43) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(44) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(45) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(46) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(47) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(48) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.

(49) "Renovate" means to restore to good condition or to repair.

(50) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(51) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(52) "Restraint" means any physical device the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(53) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).

(54) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(55) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(56) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(57) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility;

(B) All individuals employed or receiving training in an assisted living or residential care facility; and

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to:

(A) Residents and visitors of residents; or

(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.

(58) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(59) "These Rules" mean the rules in OAR chapter 411, division 054.

(60) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public; or

(b) A specific population, for example, residents with dementia or traumatic brain injury.

(61) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.

(62) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11; SPD 23-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; SPD 4-2012, f. 4-30-12, cert. ef. 5-1-12; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

411-054-0012

Requirements for New Construction or Initial Licensure

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed facility, must communicate with the Department before submitting a letter of intent as described in section (3) of this rule.

(2) Prior to beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Department for a potential license:

(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) Provide a letter of intent as set forth in section (3) of this rule.

(3) LETTER OF INTENT. Prior to application for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Department a letter of intent that includes the following:

(a) Identification of the potential applicant;

(b) Identification of the city and street address of the intended facility;

(c) Intended facility type (for example, RCF, ALF, or memory care), the intended number of units, and maximum resident capacity;

(d) Statement of whether the applicant is willing to provide care and services for an underserved population and a description of any underserved population the applicant is willing to serve;

(e) Indication of whether the applicant is willing to provide services through the state medical assistance program;

(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population; and

(g) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.

(4) MARKET ANALYSIS. The applicant must submit a current market analysis to the Department for review and consideration prior to application for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must show the need for the services offered by the license applicant and must include:

(a) A description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable;

(b) A current demographic overview of the area to be served;

(c) A description of the area and regional economy and the effect on the market for the project;

(d) Identification of the number of individuals in the area to be served who are potential residents;

(e) A description of available amenities (for example, transportation, hospital, shopping center, or traffic conditions);

(f) A description of the extent, types, and availability of existing and proposed facilities, as described in ORS 443.400 to 443.455, located in the area to be served; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(5) The Department shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of the Department, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(6) Prior to issuing a license, the Department shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules.

(7) BUILDING DRAWINGS. After the letter of intent has been submitted to the Department, one set of building drawings and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building drawings must be submitted to FPS:

(A) Prior to beginning construction of any new building;

(B) Prior to beginning construction of any addition to an existing building;

(C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) Subsequent to application for an initial license of a facility not previously licensed under this rule.

(b) Drawings must comply with the building codes and the Oregon Fire Code (OFC) as required for the occupancy classification and construction type.

(c) Drawings submitted for a licensed assisted living or residential facility must be prepared by and bear the stamp of an Oregon licensed architect or engineer.

(8) SIXTY-DAYS PRIOR. At least 60 days prior to anticipated licensure the applicant must submit to the Department:

(a) A completed application form with the required fee;

(b) A copy of the facility's written rental agreements;

(c) Disclosure information; and

(d) Facility policies and procedures to ensure the facility's administrative staff, personnel, and resident care operations are conducted in compliance with these rules.

(9) THIRTY-DAYS PRIOR. Thirty days prior to anticipated licensure the applicant must submit:

(a) To the Department, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a background check request; and

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests the scheduling of an onsite licensing inspection.

(10) TWO-DAYS PRIOR. At least two working days prior to the scheduled onsite licensing inspection of the facility, the applicant must submit, to the Department and FPS, a completed and signed Project Completion/Inspection Checklist that confirms the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Department.

(b) The onsite licensing inspection may be rescheduled at the Department's convenience if the scheduled, onsite licensing inspection reveals the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Department and FPS a copy of the Certificate of Occupancy issued by the building codes agency having jurisdiction that indicates the intended occupancy classification and construction type.

(12) CONFIRMATION OF LICENSURE. The applicant, prior to admitting any resident into the facility, must receive a written confirmation of licensure issued by the Department.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455 & 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

411-054-0090
Fire and Life Safety

(1) FIRE DRILLS. All fire drills shall be conducted according to the Oregon Fire Code (OFC).

(a) Unannounced fire drills must be conducted and recorded every other month at different times of the day, evening, and night shifts.

(b) Fire and life safety instruction to staff must be provided on alternate months.

(c) The Fire Authority may develop an alternative fire drill plan for the facility. Any such plan must be submitted to the Department.

(d) A written fire drill record must be kept to document fire drills that include:

(A) Date and time of day;

(B) Location of simulated fire origin;

(C) The escape route used;

(D) Problems encountered and comments relating to residents who resisted or failed to participate in the drills;

(E) Evacuation time period needed;

(F) Staff members on duty and participating; and

(G) Number of occupants evacuated.

(e) Alternate exit routes must be used during fire drills to react to varying potential fire origin points.

(f) The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff.

(g) Staff must provide fire evacuation assistance to residents from the building to a designated point of safety as determined by the Fire Authority having jurisdiction. Points of safety may include, outside the building, through a horizontal exit, or other areas as determined by the Fire Authority having jurisdiction.

(h) The fire alarm system shall be activated during each fire drill, unless otherwise directed by the Fire Authority having jurisdiction.

(2) If the facility is unable to meet the applicable evacuation level, the facility must make an immediate effort to make changes to ensure the evacuation standard is met. Changes must include, but not be limited to:

(a) Increasing staff levels,

(b) Changing staff assignments,

(c) Requesting change in resident rooms, and

(d) Arranging for special equipment.

After making necessary changes, if the facility fails to meet the applicable evacuation level, the facility must issue an involuntary move-out notice to the residents in accordance with OAR 411-054-0080.

(3) Fire detection and protection equipment, including visual signals with alarms for hearing impaired residents, must be maintained in accordance with the OFC and the manufacturer's instructions.

(a) The facility must provide and maintain one or more 2A:10B:C fire extinguishers on each floor in accordance with the OFC.

(b) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original containers in accordance with the fire authority having jurisdiction.

(4) SAFETY PROGRAM. A safety program must be developed and implemented to avoid hazards to residents, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, broken glass, water temperatures, and fire prevention.

(5) TRAINING FOR RESIDENTS. Residents must be instructed about the facility's fire and life safety procedures per OFC.

(a) Each resident must be instructed within 24 hours of admission and re-instructed, at least annually, in general safety procedures, evacuation methods, responsibilities during fire drills, and designated meeting places outside the building or within the fire safe area in the event of an actual fire. This requirement does not apply to residents whose mental capability does not allow for following such instruction.

(b) A written record of fire safety training, including content of the training sessions and the residents attending, must be kept.

(6) UNOBSTRUCTED EGRESS. Stairways, halls, doorways, passageways, and exits from rooms and the building must be unobstructed.

(7) FIRST AID SUPPLIES. First aid supplies must be provided, properly labeled, and readily accessible.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

411-054-0093
Emergency and Disaster Planning

An emergency preparedness plan is a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(1) The facility must prepare and maintain a written emergency preparedness plan in accordance with the OFC.

(2) The emergency preparedness plan must:

(a) Include analysis and response to potential emergency hazards, including, but not limited to:

(A) Evacuation of a facility;

(B) Fire, smoke, bomb threat, and explosion;

(C) Prolonged power failure, water, and sewer loss;

(D) Structural damage;

(E) Hurricane, tornado, tsunami, volcanic eruption, flood, and earthquake;

(F) Chemical spill or leak; and

(G) Pandemic.

(b) Address the medical needs of the residents, including:

(A) Access to medical records necessary to provide services and treatment; and

(B) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.

(c) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

(3) The facility must notify the Department, the local AAA office, or designee, of the facility's status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(4) The facility must conduct a drill of the emergency preparedness plan at least twice a year in accordance with the OFC and other applicable state and local codes as required. One of the practice drills may consist of a walk-through of the duties or a discussion exercise with a hypothetical event, commonly known as a tabletop exercise. These simulated drills may not take the place of the required fire drills.

(5) The facility must annually review or update the emergency preparedness plan as required by the OFC and the emergency preparedness plan must be available on-site for review upon request.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991 & OL 2007 Ch. 205

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

411-054-0200

Residential Care Facility Building Requirements

A residential care facility (RCF), as defined by OAR 411-054-0005, shall be built to the following requirements and may have individual or shared living units.

(1) Applicability for 411-054-0200 shall apply to the following;

(a) A RCF not licensed prior to 01/15/2015,with the exception of 411-054-0200 (5)(a) related to lockable doors . This will apply to all existing and new construction on the effective date as indicated.

(b) A major alteration to a RCF for which plans were not submitted to Facilities, Planning, and Safety (FPS) prior to 01/15/2015; or

(c) OAR 411-054-0200 shall apply only to the major alteration and shall not apply to any other area of the facility.

(2) BUILDING CODES. Each RCF must meet the requirements of the facility standards set forth in these rules and with the building codes in effect at the time of original licensure.

(a) Subsequent modifications made to a RCF after original licensure, including, but not limited to demolition, remodeling, construction, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes in place at the time of the modification.

(b) If a change in use and building code occupancy classification occurs, license approval shall be contingent on meeting the requirements of the building codes.

(c) A RCF must comply with FPS program requirements for submission of building drawings and specifications as described in OAR 333-675-0000 through 333-675-0050.

(3) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the RCF common- use areas, entrance, and exit ways must be made of hard, smooth material, be accessible, and maintained in good repair.

(b) A RCF must take measures to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) RCF grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) As described in OAR 411, division 057, memory care communities licensed as a RCF must be located on the ground floor.

(e) A RCF must provide storage for all maintenance equipment, including yard maintenance tools, if not provided by a third party contract.

(f) A RCF must provide an accessible outdoor recreation area. The outdoor recreation area must be available to all residents. Lighting must be equal to a minimum of five foot candles. Memory Care Communities must provide residents with direct access to a secure outdoor recreation area as described in OAR chapter 411, division 057.

(g) Outdoor perimeter fencing may not be secured to prevent exit unless the RCF has written approval from the Department or the RCF is in compliance with OAR chapter 411, division 057 (Memory Care Communities) or OAR 309-032-1500 through 309-032-1565(Enhanced Care Services).

(h) A RCF must have an entry and exit drive to and from the main building entrance that allows for a vehicle to pick up and drop off residents and mail deliveries without the need for vehicles to back up.

(4) GENERAL BUILDING INTERIOR. The design of a RCF must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) RECEPTION AREA. A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the RCF.

(b) CORRIDORS. Resident-use areas and units must be connected through temperature controlled common corridors.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common-use area, must have a minimum width of 72 inches.

(B) Corridors shall not exceed 150 feet in length from any resident unit to a seating or other common-use area.

(C) Handrails must be installed at one or both sides of resident-use corridors.

(c) FLOORS.

(A) Hard surface floors and base must be free from cracks and breaks.

(B) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(C) Thresholds and floor junctures must be maintained to allow for the passage of wheelchairs and to prevent a tripping hazard.

(d) INTERIOR DOORS. Lever-type door handles must be provided on all doors used by residents.

(e) EXIT DOORS. Exit doors may not include locks that delay evacuation except as specified by the building codes. Such locks may not be installed except with written approval of the Department.

(A) Exit doors may not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door that code must be clearly posted for residents, visitors, and staff use.

(f) WALLS AND CEILINGS. Walls and ceilings must be cleanable in kitchen, laundry, and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) ELEVATORS. A RCF with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(i) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety, and comfort of the resident will be kept clean and in good repair.

(5) RESIDENT UNITS. Resident units may be limited to a bedroom only, with bathroom facilities centrally located off common corridors. Each resident unit shall be limited to not more than two residents.

(a) Resident units must have a lockable door with lever type handles, effective 01/15/2017. This applies to all existing and new construction.

(b) For bedroom units, the door must open to an indoor, temperature controlled common-use area or common corridor. Residents may not enter a room through another resident's bedroom.

(c) Resident units must include a minimum of 80 square feet per resident, exclusive of closets, vestibules, and bathroom facilities and allow for a minimum of three feet between beds;

(d) All resident bedrooms must be accessible for individuals with disabilities and meet the requirements of the building codes. Adaptable units are not acceptable.

(e) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(f) WARDROBE CLOSET. A separate wardrobe closet must be provided for each resident's clothing and personal belongings. Resident wardrobe and storage space must total a minimum volume of 64 cubic feet for each resident. The rod must be adjustable for height or fixed for reach

ranges per building codes. In calculating useable space closet height may not exceed eight feet and a depth of two feet.

(g) WINDOWS.

(A) Each sleeping and living unit must have an exterior window that has an area at least one tenth of the floor area of the room.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(C) Operable windows must be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor.

(h) RESIDENT UNIT BATHROOMS. If resident bathrooms are provided within a resident unit, the bathroom must be a separate room and include a toilet, hand wash sink, mirror, towel bar, and storage for toiletry items. The bathrooms must be accessible for individuals who use wheelchairs.

(i) UNIT KITCHENS. If cooking facilities are provided in resident units, cooking appliances must be readily removable or disconnect-able and the RCF must have and carry out a written safety policy regarding resident-use and nonuse. A microwave is considered a cooking appliance.

(6) COMMON-USE AREAS.

(a) BATHING FACILITIES. Centralized bathing fixtures must be provided at a minimum ratio of one tub or shower for each ten residents not served by fixtures within their own unit.

(A) At least one centralized shower or tub must be designed for disabled access without substantial lifting by staff.

(B) Bathing facilities must be located or screened to allow for resident privacy while bathing and provide adequate space for an attendant.

(C) A slip-resistant floor surface in bathing areas is required.

(D) Grab bars must be provided in all resident showers.

(E) Showers must be equipped with a hand-held showerhead and a cleanable shower curtain.

(b) TOILET FACILITIES. Toilet facilities must be located for resident-use at a minimum ratio of one to six residents for all residents not served by toilet facilities within their own unit. Toilet facilities must include a toilet, hand wash sink, and mirror.

(A) Toilet facilities for all of the licensed resident capacity must be accessible to individuals with disabilities in accordance with the building codes.

(B) A RCF licensed for more than 16 residents must provide at least one separate toilet and hand wash lavatory for staff and visitor use.

(c) DINING AREA. The dining area must be provided with the capacity to seat 100 percent of the residents. The dining area must provide a minimum of 22 square feet per resident for seating, exclusive of serving carts and other equipment or items that take up space in the dining area. A RCF must have policies and equipment to assure food is served fresh and at proper temperatures.

(d) SOCIAL AND RECREATION AREAS. A RCF must include lounge and activity areas for social and recreational use totaling a minimum of 15 square feet per resident.

(e) COOKING STOVE. If a stove is provided in the activities or common-use area, and is available for resident-use, a keyed, remote switch, or other safety device must be provided to ensure staff control.

(7) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. A RCF must have a locked and separate closed storage area for medications, supportive of the distribution system utilized including:

(A) A method for refrigeration of perishable medications that provides for locked separation from stored food items;

(B) Medications must be stored in an area that is separate from any poisons, hazardous material, or toxic substance; and

(C) A RCF licensed for more than 16 residents must provide a medication sink.

(b) HOUSEKEEPING AND SANITATION.

(A) A RCF must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(B) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use, when a time schedule for resident-use is provided and equipment is of residential type. When the primary laundry is not in the building or suitable for resident-use, a RCF must provide separate resident-use laundry facilities.

(A) Laundry facilities must be operable and at no additional cost to the resident.

(B) Laundry facilities must have space and equipment to handle laundry-processing needs. Laundry facilities must be separate from food preparation and other resident-use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(D) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(d) SOILED LINEN PROCESSING. For the purpose of this rule, "soiled linens and soiled clothing," means linens or clothing contaminated by an individual's bodily fluids (for example, urine, feces, or blood).

(A) There must be a separate area with closed containers that ensure the separate storage and handling of soiled linens and soiled clothing. There must be space and equipment to handle soiled linen and soiled clothing processing needs that is separate from regular linens and clothing.

(B) Arrangement must provide a one-way flow of soiled linens and soiled clothing from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(C) The soiled linen room or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(D) When washing soiled linens and soiled clothing, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(E) Personnel handling soiled laundry must be provided with waterproof gloves.

(F) Covered or enclosed clean linen storage must be provided and may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(G) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(e) KITCHEN AND FOOD STORAGE. Kitchen facilities and equipment in residential care facilities with a capacity of 16 or fewer may be of residential type except as required by the building codes. Residential care facilities licensed for a capacity of more than 16, must comply with OAR 333-150-0000 (Food Sanitation Rules). The following are required:

(A) Dry storage space, not subject to freezing, for a minimum one-week supply of staple foods.

(B) Refrigeration and freezer space at proper temperature to store a minimum two days' supply of perishable foods.

(C) Storage for all dishware, utensils, and cooking utensils used by residents must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) In facilities licensed to serve 16 or fewer residents, a dishwasher must be provided (may be residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit (160 degrees recommended), unless a chemical disinfectant is used in lieu of the otherwise required water temperature. In facilities of 17 or more capacity, a commercial dishwasher is required meeting OAR 333-150-0000 (Food Sanitation Rules).

(E) In residential care facilities with a capacity of 16 or fewer, a two compartment sink or separate food preparation sink and hand wash lavatory must be provided. In residential care facilities with 17 or more capacity, a triple pot wash sink (unless all pots are sanitized in the dishwasher), a food prep sink, and separate hand wash lavatory must be provided.

(F) Food preparation and serving areas must have smooth and cleanable counters.

(G) Stove and oven equipment for cooking and baking needs.

(H) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(I) Storage for a mop and other cleaning tools and supplies used for dietary areas must be separate from those used in toilet rooms, resident rooms, and other support areas. In residential care facilities with a capacity of 17 or more, a separate janitor closet or alcove must be provided with a floor or service sink and storage for cleaning tools and supplies.

(J) Storage must be available for cookbooks, diet planning information, and records.

(K) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(8) HEATING AND VENTILATION SYSTEMS. A RCF must have heating and ventilation systems that comply with the building codes in effect at the time of facility construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(A) A RCF must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are

no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(B) During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(b) EXHAUST SYSTEMS. All toilet and shower rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(c) FIREPLACES, FURNACES, WOODSTOVES, AND BOILERS. Where used, installation must meet standards of the building codes in effect at the time of construction. The glass and area surrounding the fireplace must not exceed 120 degrees Fahrenheit.

(d) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements may not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material. Effective 01/15/2014, wall heaters are not acceptable in new construction or remodeling.

(9) PLUMBING SYSTEMS. Plumbing systems must conform to the building codes in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts, and garbage cans.

(10) ELECTRICAL REQUIREMENTS.

(a) WIRING SYSTEMS. All wiring systems must meet the building codes in effect at the date of installation and shall be maintained and in good repair.

(b) The use of extension cords and other special taps is not allowed.

(c) LIGHTING. Lighting fixtures must be provided in each resident bedroom and bathroom, and be switchable and near the entry door.

(A) Each resident bedroom must have illumination of at least 20-foot candles measured at three feet above the floor for way finding from the room entrance, to each bed, and to the adjoining toilet room, if one exists.

(B) Lighting in toilet rooms and bathing facilities used by residents must be at least 50-foot candles, measured at the hand wash sink and three feet above the shower floor with the curtain open.

(C) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(D) Table height lighting in dining rooms must equal a minimum of 25-foot candles, without light from windows.

(11) CALL SYSTEM. A RCF must provide a call system that connects resident units to the care staff center or staff pagers. Wireless call systems are allowed.

(a) A manually operated emergency call system must be provided in each toilet and bathing facility used by residents and visitors.

(b) EXIT DOOR ALARMS. An exit door alarm or other acceptable system must be provided for security purposes and to alert staff when residents exit the RCF. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include, but not be limited to, electronic pendants, bracelets, pins.

(12) TELEPHONES. Adequate telephones must be available for resident, staff, and visitor use, including those individuals who have physical disabilities. If the only telephone is located in a staff area, it must be posted that the telephone is available for normal resident-use at any time and that staff shall ensure the resident's uninterrupted privacy. Staff may provide assistance when necessary or requested.

(13) TELEVISION ANTENNA OR CABLE SYSTEM. A RCF must provide a television antenna or cable system with an outlet in each resident unit.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455 & 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

411-054-0300
Assisted Living Facility Building Requirements

An assisted living facility (ALF), as defined by OAR 411-054-0005, shall be built to the following requirements and have individual living units that have a lockable door, private bathroom, and kitchenette.

(1) Applicability for 411-054-0300 shall apply to the following:

(a) An ALF not licensed prior to 01/15/2015; or

(b) A major alteration to an ALF for which plans were not submitted to Facilities, Planning, and Safety prior to 01/15/2015;

(c) OAR 411-054-0300 shall apply only to the major alteration and shall not apply to any other area of the facility.

(2) BUILDING CODES. Each ALF must meet the requirements of the facility standards set forth in these rules and with the building codes in effect at the time of original licensure.

(a) Subsequent modifications made to an ALF after original licensure, including, but not limited to, demolition, remodeling, construction, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes in place at the time of the modification.

(b) If a change in use and building code occupancy classification occurs, license approval shall be contingent on meeting the requirements of the building codes.

(c) An ALF must comply with FPS program requirements for submission of building drawings and specifications as described in OAR 333-675-0000 through 333-675-0050.

(3) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the ALF's common-use areas, entrance, and exit ways must be made of hard, smooth material, be accessible, and maintained in good repair.

(b) An ALF must take measures to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) ALF grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) As described in OAR chapter 411, division 057, memory care communities licensed as an ALF must be located on the ground floor.

(e) An ALF must provide storage for all maintenance equipment, including yard maintenance tools, if not provided by third party contract.

(f) An ALF must provide an accessible outdoor recreation area. The outdoor recreation area must be available to all residents. Lighting must be equal to a minimum of five foot candles. Memory care communities must provide residents with direct access to a secure outdoor recreation area as described in OAR chapter 411, division 57.

(g) Outdoor perimeter fencing may not be secured to prevent exit unless the ALF has received written approval from the Department or the ALF is in compliance with OAR chapter 411, division 57 (Memory Care Communities) or OAR 309-032-1500 through 309-032-1565(Enhanced Care Services).

(h) An ALF must have an entry and exit drive to and from the main building entrance that allows for a vehicle to pick up and drop off residents and mail deliveries without the need for vehicles to back up.

(4) GENERAL BUILDING INTERIOR. The design of an ALF must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) RECEPTION AREA. A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the ALF.

(b) CORRIDORS. Resident-use areas and units must be connected through temperature controlled common corridors.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common-use area, must have a minimum width of 72 inches.

(B) Corridors shall not exceed 150 feet in length from any resident unit to a seating or other common-use area.

(C) Handrails must be installed at one or both sides of resident-use corridors.

(c) FLOORS.

(A) Hard surface floors and base must be free from cracks and breaks.

(B) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(C) Thresholds and floor junctures must be maintained to allow for the passage of wheelchairs and to prevent a tripping hazard.

(d) INTERIOR DOORS. Lever-type door handles must be provided on all doors used by residents.

(e) EXIT DOORS. Exit doors may not include locks that delay evacuation except as specified by building codes. Such locks may not be installed except with written approval of the Department.

(A) Exit doors may not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door that code must be clearly posted for residents, visitors, and staff use.

(f) WALLS AND CEILINGS. Walls and ceilings must be cleanable in kitchen, laundry, and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) ELEVATORS. An ALF with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(i) All interior and exterior materials and surfaces (e.g. floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety, and comfort of the resident must be kept clean and in good repair.

(5) RESIDENT UNITS. All resident units must be accessible per building codes. These apartments must have a lockable entry door with lever type handle, a private bathroom, and kitchenette facilities. Adaptable units are not acceptable.

(a) UNIT DIMENSIONS. New construction units must have a minimum of 220 net square feet, not including the bathroom. Units in pre-existing structures being remodeled must have a minimum of 160 square feet, not including the bathroom.

(b) RESIDENT STORAGE SPACE.

(A) Each unit must provide usable space totaling at least 100 cubic feet for resident clothing and belongings and include one clothes closet with a minimum of four linear feet of hanging space.

(B) The rod must be adjustable for reach ranges per building codes. In calculating useable space, closet height may not exceed eight feet and a depth of two feet.

(C) Kitchen cabinets must not be included when measuring storage space.

(D) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(c) WINDOWS.

(A) Each resident's living room and bedroom must have an exterior window that has an area at least one-tenth of the floor area of the room.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(C) Operable windows must be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor.

(d) DOORS. Each unit must have an entry door that does not swing into the exit corridor.

(A) A locking device must be included that is released with action of the inside lever. Locks for the entry door must be individually keyed, master keyed, and a key supplied to the resident.

(B) The unit exit door must open to an indoor, temperature controlled, common-use area or common corridor.

(e) BATHROOM. The unit bathroom must be a separate room with a toilet, sink, a roll-in curbless shower, towel bar, toilet paper holder, mirror, and storage for toiletry items.

(A) The door to the bathroom must open outward or slide into the wall.

(B) Showers must have a slip-resistant floor surface in front of roll-in showers, a hand-held showerhead, cleanable shower curtains, and appropriate grab bar.

(f) KITCHENS OR KITCHENETTES. Each unit must have a kitchen area equipped with the following:

(A) A sink, refrigerator, and cooking appliance that may be removed or disconnected. A microwave is considered a cooking appliance.

(B) Adequate space for food preparation.

(C) Storage space for utensils and supplies.

(D) Counter heights may not be higher than 34 inches.

(6) COMMON-USE AREAS.

(a) PUBLIC RESTROOMS. There must be accessible public restrooms for visitor, staff, and resident-use, convenient to dining and recreation areas.

(A) The public restroom must contain a toilet, sink, waste container, and a hand drying means that cannot be reused.

(B) There must be a manually operated emergency call system in the public restrooms.

(b) DINING AREA. The building must have a dining area with the capacity to seat 100 percent of the residents. The dining area must provide 22 square feet per resident for seating, exclusive of service carts and other equipment or items that take up space in the dining area. This rule is exclusive of any separate private dining areas.

(c) SOCIAL AND RECREATION AREAS. An ALF must include lunge and activity areas for social and recreational-use totaling a minimum of 15 square feet per resident.

(d) COOKING STOVE. If a stove is provided in the activities or common-use area, and is available for resident-use, a keyed, remote switch, or other safety device must be provided to ensure staff control.

(e) RESIDENT LAUNDRY FACILITIES. Laundry facilities must be operable and at no additional cost to the resident. Resident laundry facilities must have at least one washer and dryer.

(f) MAILBOX. Each resident or unit must be provided a mailbox that meets US Postal Service requirements.

(7) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. An ALF must provide a secure space for medication storage, with access to a sink and cold storage in the same area. Space for necessary medical supplies and equipment must be provided.

(b) HOUSEKEEPING AND SANITATION.

(A) An ALF must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(B) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident-use is provided and equipment is of residential type.

(A) If the primary laundry facility is not suitable for resident-use, an ALF must provide separate resident laundry facilities.

(B) Laundry facilities must be separate from food preparation and other resident-use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(D) An ALF must provide covered or enclosed clean linen storage that may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(E) The wall base of the laundry facilities must be continuous and coved with the floor, tightly sealed to the wall and constructed without voids that may harbor insects or moisture.

(d) SOILED LINEN PROCESSING. For the purpose of this rule, "soiled linens and soiled clothing," means linens or clothing contaminated by an individual's bodily fluids (for example, urine, feces, and blood).

(A) There must be a separate area with closed containers that ensure the separate storage and handling of soiled linens and soiled clothing. There must be space and equipment to handle soiled linen and soiled clothing processing needs that is separate from regular linen and clothing.

(B) Arrangement must provide a one-way flow of soiled linens and soiled clothing from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(C) The soiled linen area must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(D) When washing soiled linens and soiled clothing, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(E) Personnel handling soiled laundry must be provided with waterproof gloves.

(F) Covered or enclosed clean linen storage must be provided and may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(G) The wall base of the laundry facilities must be continuous and coved with the floor, tightly sealed to the wall and constructed without voids that may harbor insects or moisture.

(e) KITCHEN AND FOOD STORAGE. An ALF must comply with OAR 333-150-0000 (Food Sanitation Rules), for food handling and primary meal preparation areas. Each ALF must have:

(A) Dry storage space, not subject to freezing, for a minimum one-week supply of staple foods.

(B) Refrigeration and freezer space at the proper temperature to store a minimum two days' supply of perishable foods.

(C) Storage for all dishware, utensils, and cooking utensils used by residents must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) Storage for a mop, other cleaning tools, and supplies used for dietary areas. Such tools must be separate from those used in toilet rooms, resident rooms, and other support areas.

(E) A separate janitor closet or alcove with a floor or service sink and storage for cleaning tools and supplies.

(F) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(G) Storage must be available for cookbooks, diet planning information, and records.

(H) All kitchen and food storage areas must have a wall base that is continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(8) HEATING AND VENTILATION SYSTEMS. An ALF must have heating and ventilation systems that comply with the building codes in effect at the time of facility construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(A) An ALF must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(B) During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(C) Each unit must have individual thermostatic heating controls.

(b) EXHAUST SYSTEMS. All toilet and shower rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(c) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements may not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by individuals or with combustible material. Effective 01/15/2015 wall heaters are not acceptable in new construction or remodeling.

(d) VENTILATION. Ventilation in each unit must occur via an open window to the outside, or with a mechanical venting system capable of providing two air changes per hour with one-fifth of the air supply taken from the outside.

(9) PLUMBING SYSTEMS. Plumbing systems must conform to the building codes in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts, and garbage cans.

(10) ELECTRICAL SYSTEMS.

(a) WIRING SYSTEMS. All wiring systems must meet the building codes in effect at the date of installation and devices shall be maintained and in good repair.

(b) The use of extension cords and other special taps is not allowed.

(c) LIGHTING. Each unit must have general illumination in the bath, kitchen, living space, and sleeping area. The general lighting intensity in the unit for way finding must be at least 20-foot candles measured from the floor.

(A) Lighting in the unit bathroom must be at least 50-foot candles measured from the height of the hand-wash basin and three feet above the shower floor with the curtain open.

(B) Task lighting at the unit food preparation or cooking area must be at least 50-foot candles measured from counter height.

(C) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(D) Table height lighting in the dining room must equal a minimum of 25-foot candles without light from windows.

(11) CALL SYSTEM. An ALF must provide a call system that connects resident units to the care staff center or staff pagers. Wireless call systems are allowed.

(a) A manually operated emergency call system must be provided at each resident bathroom, central bathing rooms, and public-use restrooms.

(b) EXIT DOOR ALARMS. Exit door alarms or other acceptable systems must be provided for security purposes and to alert staff when residents exit the ALF. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include, but not be limited to, electronic pendants, bracelets, pins.

(12) TELEPHONES.

(a) RESIDENT PHONES. Each unit must have at least one telephone jack to allow for individual phone service.

(b) PUBLIC TELEPHONE. There must be an accessible local access public telephone in a private area that allows a resident or another individual to conduct a private conversation.

(13) TELEVISION ANTENNA OR CABLE SYSTEM. An ALF must provide a television antenna or cable system with an outlet in each resident unit.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455 & 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15

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Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 17-2014
Filed with Sec. of State: 12-24-2014
Certified to be Effective: 12-24-14
Notice Publication Date: 10-1-2014
Rules Amended: 413-015-0115, 413-015-0400, 413-015-0409 413-015-0415, 413-015-0420, 413-015-0432, 413-015-0450, 413-015-0540, 413-015-1105, 413-015-9030, 413-015-9040, 413-200-0414
Rules Repealed: 413-015-0115(T), 413-015-0409(T), 413-015-0415(T), 413-015-0420(T), 413-015-0432(T), 413-015-0540(T), 413-015-1105(T), 413-015-9040(T), 413-200-0414(T)
Subject: The Department of Human Services, Office of Child Welfare Programs, is making rule changes to clarify, assure consistency with, and correct errors in rules that were adopted effective May 27, 2014, which implemented a Differential Response (DR) system in Oregon and updated the Oregon Safety Model (OSM) practice. These rule changes make permanent temporary rules that were adopted effective July 1, 2014, and include additional changes. Specifically:

OAR 413-015-0115, which defines terms used in Child Protective Services (CPS) rules, is amended to: (1) revise the definition of "conditions for return" to clarify that they are only used with ongoing safety plans; (2) change the definition of "domestic violence" so it is not limited to individuals age 18 and over; and (3) correct the definition of "safe" to accurately state that safe means the absence of any threats.

OAR 413-015-0400 about the purpose of the CPS assessment rules is amended to clarify that conditions for return are only used with ongoing safety plans, not initial safety plans.

OAR 413-015-0409 about exceptions to completing CPS assessment activities is amended to remove a requirement that no longer applies under the Department's current electronic information system.

OAR 413-015-0415 about CPS assessment activities is amended to make the language in paragraph (10)(b)(B) consistent with changes to ORS 419B.023(4)(a) made by Oregon Laws 2014, Chapter 45, Section 42 (Senate Bill 1548), which became effective July 1, 2014.

OAR 413-015-0420 about making initial contact in a CPS assessment is amended to make language internally consistent. Changes to paragraph (2)(c)(B) that went into effect May 27, 2014, refer to a decision to delay interview of an alleged perpetrator; these amendments make the language in the same sentence about documenting the decision consistent.

OAR 413-015-0432 about developing safety plans is amended to: (1) remove the redundant requirement that all types of safety plans explain how they are the least intrusive means to effectively manage the identified threat; (2) remove the requirement that all types of safety plans include conditions for return, which only apply to ongoing safety plans; and (3) correct an error. Section (6)(d) of the rule requires that an exception granted under subsection (2)(g) of the rule be documented; the exception was removed from subsection (2)(g) effective May 27, 2014, but the documentation requirement was inadvertently left in the rule.

OAR 413-015-0450 about ongoing safety plans is amended to add the requirement (removed from 413-015-0432) that the plan include conditions for return, and to clarify that the worker need only reevaluate an initial safety plan to determine if it is appropriate and sufficient as an ongoing safety plan, and would not reevaluate a pro-

tective action plan for that purpose, consistent with other OSM rule changes that went into effect May 27, 2014.

OAR 413-015-0540 about making initial contact in an investigation of abuse or neglect in a day care facility is amended to make the language regarding assessment of safety consistent with other OSM rule changes that went into effect May 27, 2014.

OAR 413-015-1105, which describes the purpose of the rules about Access to Law Enforcement Data System (LEDS) in Local Child Welfare Offices, is amended to make the language about threats consistent with other OSM rule changes that went into effect May 27, 2014.

OAR 413-015-9030 about CPS screening in counties that are implementing DR is amended to: (1) provide that a traditional response assessment is required when there is a new report on an open Department case with an identified impending danger safety threat; (2) limit the requirement that the screener consult with a supervisor when the screener determines a traditional response assessment is required to report in which there is an open alternative response assessment; and (3) require that a "within 24 hours" response time line is required for an alternative response assessment when the information indicates that a child has a current injury as a result of the alleged abuse or neglect.

OAR 413-015-9040 about CPS assessments in counties that are implementing DR is amended to clarify that conditions for return are only used with ongoing safety plans, not initial safety plans, to clarify that a community partner or support person may accompany the worker on initial contact, and to correct an error. When this rule was adopted effective May 27, 2014, an exception to determining if the family has moderate to high needs when the family is a Department-certified foster parent or relative caregiver was not included but should have been included, consistent with the rule about CPS assessments that applies in counties that are not implementing DR.

OAR 413-200-0414 about Department actions during screening of reports of abuse or neglect in the home of a Department-certified foster parent or relative caregiver is amended to update the agencies to which information is provided, and with whom the Department response is coordinated, when the young adult victim has a physical, developmental, or mental disability, consistent with changes to the CPS screening and assessment rules that went into effect May 27, 2014.

In addition, minor edits were made to the above rules to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Kris Skaro—(503) 945-6067

413-015-0115
Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse or neglect" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services" (CPS) means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(5) "Child protective services assessment" (CPS assessment) means an investigation into a report of child abuse pursuant to ORS 419B.020, that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(6) "Child protective services supervisor" (CPS supervisor) means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker" (CPS worker) means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(8) "Child Safety Meeting" means a meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(9) "Children's Care Provider" (CCP) means a DHS-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.

(10) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(11) "Day Care Facility" means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider that is exempt from Office of Child Care licensing and that receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(12) "Department" means the Department of Human Services, Child Welfare.

(13) "Department response" means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(14) "Designated medical professional" means (as described in ORS 418.747(9)) a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS 418.782), and who is — or who may designate another physician, physician assistant, or nurse practitioner who is — regularly available to conduct these medical assessments.

(15) "Domestic violence" means a pattern of coercive behavior, which can include physical, sexual, economic, and emotional abuse that an individual uses against a past or current intimate partner to gain power and control in a relationship.

(16) "Face-to-face" means an in-person interaction between individuals.

(17) "Former foster child" means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.

(18) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(19) "Harm" means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning. "Harm" is the result of child abuse or neglect and may vary from mild to severe.

(20) "ICWA" means the Indian Child Welfare Act.

(21) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a child that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(22) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; and gathering sufficient information on the family conditions and functioning to determine if present danger safety threats or impending danger safety threats exist.

(23) "Initial safety plan" means a documented set of actions or interventions sufficient to protect a child from an impending danger safety threat in order to allow for completion of the CPS assessment.

(24) "Moderate to high needs" means observable family behaviors, conditions, or circumstances that are occurring now; and over the next year without intervention, are likely to have a negative impact on a child's physical, sexual, psychological, cognitive, or behavioral development or functioning. The potential negative impact is not judged to be severe. While

intervention is not required for the child to be safe, it is reasonable to determine that short-term, targeted services could reduce or eliminate the likelihood that the negative impact will occur.

(25) "Multi-disciplinary team" (MDT) means a county child abuse investigative team as defined in ORS 418.747.

(26) "Observable" means specific, real, can be seen and described. Observable does not include suspicion or gut feeling.

(27) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

(28) "Out of control" means family behaviors, conditions, or circumstances that can affect a child's safety are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(29) "Personal representative" means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(30) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(31) "Present danger safety threat" means an immediate, significant, and clearly observable family behavior, condition, or circumstance occurring in the present tense, already endangering or threatening to endanger a child. The family behavior, condition, or circumstance is happening now and it is currently in the process of actively placing a child in peril.

(32) "Private child-caring agency" is defined in ORS 418.205, and means a "child-caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs as defined in OAR 413-215-0911; or

(E) Other similar services for children.

(b) A "child-caring agency" does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(33) "Protective action plan" means an immediate, same day, short-term plan, lasting a maximum of ten calendar days, sufficient to protect a child from a present danger safety threat.

(34) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(35) "Protective custody" means custody authorized by ORS 419B.150.

(36) "Reasonable suspicion" means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.

(37) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(38) "Report" means an allegation of child abuse or neglect provided to the Department that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(39) "Reporter" means an individual who makes a report.

(40) "Safe" means there is an absence of present danger safety threats and impending danger safety threats.

(41) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(42) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified present danger safety threats or impending danger safety threats to a child.

(43) "Safety threshold" means the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria: be imminent, be out of control, affect a vulnerable child, be specific and observable, and have potential to cause severe harm to a child. The "safety threshold" criteria are used to determine the presence of an impending danger safety threat.

(44) "School administrator" means the principal, vice principal, assistant principal, or any other person performing the duties of a principal, vice principal, or assistant principal at a school, as defined in the Teacher Standards and Practices Commission (TSPC) OAR 584-005-0005.

(45) "Screener" means a Department employee with training required to provide screening services.

(46) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(47) "Severe harm" means:

(a) Significant or acute injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning;

(b) Immobilizing impairment; or

(c) Life threatening damage.

(48) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over-the-counter medications, or alcoholic beverages.

(49) "Suspicious physical injury" (as defined in ORS 419B.023) includes, but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone in a child under the age of three;

(e) Multiple fractures in a child of any age;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child's developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(k) Any other injury that threatens the physical well-being of the child.

(50) "Teacher" means (as defined in TSPC OAR 584-005-0005) a licensed or registered employee in a public school or charter school, or employed by an education service district, who has direct responsibility for instruction, coordination of educational programs, or supervision or evaluation of teachers; and who is compensated for services from public funds.

(51) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(52) "Unsafe" means the presence of a present danger safety threat or an impending danger safety threat.

(53) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A "vulnerable child" is defenseless, exposed to behaviors, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

Stat. Auth.: ORS 409.185, 418.005, 418.747, 419B.017, 419B.024, 419B.035

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2010(Temp), f. & cert. ef. 6-15-10 thru 12-12-10; CWP 21-2010, f. & cert. ef. 11-15-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0400
Purpose and Overview of the CPS Assessment Rules

(1) These rules, OAR 413-015-0400 to 413-015-0485, describe the activities required to sufficiently complete a CPS assessment.

(2) Completing a CPS assessment involves the following:

(a) Making face-to-face contact with the alleged victim, his or her siblings, his or her parent or caregiver, including the non-custodial legal parent, other children and adults living in the home, and the alleged perpetrator;

(b) Accessing the home environment;

(c) Gathering safety-related information through interviews and observation;

(d) Determining if there is a present danger safety threat;

(e) Determining if there is an impending danger safety threat by applying the safety threshold criteria:

(A) Imminent;

(B) Observable;

(C) Vulnerable child;

(D) Out of control; and

(E) Severity

(f) Developing a protective action plan when a child is determined to be unsafe due to a present danger safety threat;

(g) Developing an initial safety plan when a child is determined to be unsafe due to an impending danger safety threat;

(h) Developing an ongoing safety plan when a child is determined to be unsafe from an impending danger safety threat at the conclusion of a CPS assessment;

(i) Determining whether the initial safety plan or ongoing safety plan is the least intrusive plan sufficient to manage child safety by identifying how the impending danger safety threat is occurring and applying the in-home safety plan criteria;

(j) Developing conditions for return when an out-of-home ongoing safety plan is established;

(k) Determining whether a family has moderate to high needs when a child is determined to be safe;

(l) Offering and, if appropriate, referring a family with moderate to high needs to available non-contracted community services; and

(m) Determining if there is reasonable cause to believe that child abuse or neglect has occurred.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0409
Exception to Completing CPS Assessment Activities

(1) The only exception to completing the CPS assessment activities required by these rules (OAR 413-015-0400 to 413-015-0485) on an assigned referral is when a CPS worker, in consultation with a CPS supervisor or designee, determines prior to the initial contact (see OAR 413-015-0420) that the referral does not require a CPS assessment because:

(a) The referral was opened in error; or

(b) There is no longer an allegation of abuse or neglect. The CPS worker received information after being assigned the referral and that information in combination with the corresponding screening report no longer constitutes a report of child abuse or neglect as defined in ORS 419B.005. This exception may be used only when the CPS worker and the CPS supervisor or designee determine the information:

(A) Is not from the alleged perpetrator;

(B) Relates directly to and specifically negates all allegations in the screening report; and

(C) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) The exception in section (1) of this rule is not permitted and a CPS assessment must be completed when the CPS worker has already made contact with the parent, caregiver, or alleged victim, unless the parent, caregiver, or alleged victim is the original reporter.

(3) The CPS worker must document the determination in the Department's electronic information system and explain the basis for the determination that a CPS assessment is not necessary.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050
Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 13-2009, f. 10-1-09, cert. ef. 10-2-09; CWP 13-2009, f. 10-1-09, cert. ef. 10-2-09; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0415
CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self-Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Present danger safety threats or impending danger safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior Allegations That Have Not Been Assessed Because the Department was Unable to Locate the Family. The assigned CPS worker must address in the current assessment any allegations not previously assessed because the Department was unable to locate the family as follows:

(a) Discuss the prior unassessed allegations during interviews;

(b) Consider all information about prior unassessed allegations when determining child safety; and

(c) Document the consideration of prior unassessed allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned Self-Sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior and functioning; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with the Department.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department of Human Services or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a private child-caring agency;

(D) When a CPS worker receives notification from a screener that a closed at screening or new referral was created on an open CPS assessment;

(E) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(F) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(G) Prior to developing an initial safety plan with a Department certified foster parent or relative caregiver;

(H) When the referral involves a child fatality;

(I) When making a disposition in a complicated or sensitive situation or case; or

(J) When closing an assessment with the disposition of "unable to locate".

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to gather and analyze safety-related information, develop a sufficient protective action plan, initial safety plan, or ongoing safety plan, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department of Human Services programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must report to or contact and work with other entities as follows:

(A) Office of Child Care. The CPS worker must notify and coordinate with the Compliance Unit of the Office of Child Care when a report involves a registered day-care home or a licensed day-care center, as required by ORS 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Office of Adult Abuse Prevention and Investigation (OAAPI). The CPS worker must notify the OAAPI when an allegation involves a child with intellectual or developmental disabilities in a residential group home licensed by the Office of Developmental Disabilities Services.

(D) Office of Licensing and Regulatory Oversight. The CPS worker must notify the Office of Licensing and Regulatory Oversight Children's Care Licensing Unit when the allegation involves a licensed private child-caring agency which is not a Children's Care Provider (CCP).

(E) Community Mental Health Program, Community Developmental Disabilities Program, or Adult Protective Services. The CPS worker must make a report to the Community Mental Health Program, Community Developmental Disabilities Program, or the local Adult Protective Service office when the CPS worker has reasonable cause to believe:

(i) That any person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older, with whom the CPS worker comes into contact while acting in an official capacity, has suffered abuse.

(ii) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older.

(F) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(G) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(H) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies (LEA) in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to OAR 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. The CPS worker must, in consultation with a CPS supervisor, determine whether to coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody for the child's safety.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behaviors, conditions, or circumstances could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(I) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker may confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(J) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine Indian Child Welfare Act (ICWA) Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Assure completion of a form CF 1270, "Verification of ICWA Eligibility", to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by the Department.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources.

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child, the CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, reasons why the child or parents came to the United States, and ethnic and cultural information relevant to the child's status as a refugee. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) Unless it is a voluntary placement, no refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents a threat to the child's safety;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) When a juvenile court petition is filed and a refugee child is placed in care, the CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the International Case Consultant for the Department to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs. The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse or neglect and the observable nature of any present danger safety threat or impending danger safety threat.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if the CPS worker conducting a CPS assessment observes a child who has suffered suspicious physical injury and the CPS worker is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries. Regardless of whether the child has previously been photographed or assessed during a CPS assessment, the CPS worker will photograph or cause to be photographed any suspicious injuries if the CPS worker is certain or has a reasonable suspicion the suspicious injuries are the result of abuse:

(A) During the assessment of a new allegation of abuse; and

(B) Each time, during the assessment, an injury is observed that was not previously observed by the assigned CPS worker.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the Department record labeled with the case name, case number, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and the observable nature of any present danger safety threat or impending danger safety threat in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment. The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety-related information.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury as defined in ORS 419B.023 and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician, physician assistant, or nurse practitioner conducts a medical assessment if, after reasonable efforts to locate a designated medical professional, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in the Department's electronic information system efforts to locate the designated medical professional when an available physician, physician assistant, or nurse practitioner is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must

also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information".

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child; or

(iii) Delaying medical examination or treatment could result in severe harm to the child.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety-related information when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 418.747, 418.785 & 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; CWP 4-2010, f. & cert. ef. 4-2-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0420
Make Initial Contact

(1) The CPS worker must make an initial contact within the assigned response time line.

(2) The following outlines contacts the CPS worker is required to attempt and, when possible, complete at initial contact. The CPS worker must:

(a) Have face-to-face contact with and interview the alleged victim, his or her siblings, and other children living in the home. The purpose of the face-to-face contact and interview with the alleged victim, his or her siblings, and other children living in the home is to gather information regarding possible child abuse and neglect, gather information about the children's functioning and vulnerability, and assess the children's immediate safety.

(A) Interview and observe children as follows:

(i) The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety.

(ii) The CPS worker must make diligent efforts to contact the child at home, school, day care, or any other place where the worker believes the child may be found. If the CPS worker is unsuccessful, the CPS worker must document in the Department's electronic information system all attempts made to contact the child and the dates of those attempted contacts.

(iii) When the CPS worker contacts the child at home and the parent or caregiver is not present:

(I) The CPS worker must consult with a CPS supervisor and seek assistance from LEA if the referral indicates there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling; or the child is inadequately supervised and there is an immediate need to evaluate the child's health and safety.

(II) The CPS worker must wait until the parent is present in the home to complete a child interview in the home if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.

(iv) When the CPS worker is denied access to the child or to the child's residence, the CPS worker must, if the referral indicates that the child may be unsafe, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed. If the referral indicates that the child is presently safe, the CPS worker must consider the following:

(I) Attempting to contact other persons who may have relevant information regarding the referral;

(II) Persisting in attempts to gain cooperation from the family or caregivers, depending on the known child safety information;

(III) Seeking LEA assistance;

(IV) Consulting with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(V) Seeking a protective custody order from the juvenile court.

(v) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(vi) If the parent or caregiver is the alleged perpetrator or if the presence of the parent or caregiver might impede the interview, the CPS worker must attempt to interview children outside the presence of their parents or caregivers.

(vii) A CPS worker must allow a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the abuse to have a personal representative be present during an interview. If a CPS worker believes that the personal representative would compromise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(viii) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(I) Use discretion and make the child as comfortable as possible.

(II) Seek parental consent and assistance, when possible and appropriate.

(III) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

(ix) The CPS worker may observe injuries to a child's anal or genital region if the child is not school aged and if the injury can be observed without the CPS worker touching the child's anal or genital region.

(B) The CPS worker must notify the parents or caregivers the same day a child is interviewed. If the same day notification could make a child or adult unsafe, a CPS supervisor may authorize an extension for one day to allow a planned notification that is less likely to compromise safety. The CPS worker must document in the Department's electronic information system the supervisory approval and an explanation describing the basis for the approval.

(b) Have face-to-face contact with and interview the non-offending parent or caregiver and all adults living in the home. The purpose of this

face-to-face contact and interview is to find out what the non-offending parent or caregiver and other adults living in the home know about the alleged child abuse or neglect, gather information related to the safety of the child, including parent and caregiver functioning, and gather information to determine if the parent or caregiver can or cannot and will or will not protect the child.

(A) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(i) Interview each person in a manner that considers each person's privacy and safety and assures effective communication. This may require interviewing parents or caregivers individually and also together depending on the information being gathered;

(ii) Ask questions about domestic violence in separate interviews only; and

(iii) Provide all adults living in the home with a written notice that a criminal records check may be conducted on them.

(B) The CPS worker must provide each parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(C) The CPS worker must interview the non-custodial legal parent during the CPS assessment. This is not required during the initial contact, but must be completed as part of the assessment process because the non-custodial parent may have essential information or be a placement resource. If the interview of the non-custodial legal parent may make a child or adult unsafe, a CPS supervisor may authorize an exception to this requirement based on written documentation that supports the conclusion that an interview with a non-custodial legal parent should not be conducted.

(c) Have face-to-face contact with and interview the alleged perpetrator. Except as provided in this subsection, the CPS worker must make face-to-face contact with and interview the alleged perpetrator during the initial contact when he or she is the child's custodial parent, caregiver, any person living in the home, or is present in the home when the CPS worker makes contact. The purpose of this interview is to evaluate the alleged perpetrator's reaction to allegations of abuse or neglect as well as to the child and his or her condition, and to gather further information about the alleged perpetrator and the family in relation to the safety of the child. When the alleged perpetrator is a minor parent, the purpose is also to determine if the minor parent is an alleged victim of abuse (under paragraph (D) of this subsection).

(A) The CPS worker is not required to make face-to-face contact with or interview the alleged perpetrator during the initial contact if:

(i) The alleged perpetrator is not a custodial parent, caregiver, anyone living in the home, or is not present in the home when the CPS worker makes contact and delaying contact will not compromise child safety. The CPS worker still must interview the alleged perpetrator, but may complete the interview during the course of the CPS assessment; or

(ii) There is a criminal investigation and the interview cannot be coordinated with an LEA within the time lines for initial contact.

(B) The decision to delay interview of an alleged perpetrator as provided in subparagraphs (A)(i) or (ii) of this subsection must be approved by a CPS supervisor, and the CPS worker must document in the Department's electronic information system both the approval and the reason for delaying the interview.

(C) When interviewing the alleged perpetrator, the CPS worker must:

(i) Coordinate the interviews of the alleged perpetrator with LEA when law enforcement is conducting an investigation;

(ii) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe;

(iii) Provide the alleged perpetrator with a written notice that a criminal records check may be conducted on them; and

(iv) Make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department of Human Services (DHS) or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the DHS or OYA, the CPS supervisor must notify the DHS Office of Human Resources at the time of the assessment and at the time the assessment is reviewed as required in OAR 413-015-0475. The CPS supervisor must document the notifications in the Department's electronic information system.

(D) When interviewing the alleged perpetrator who is a minor and the parent of the alleged victim, the CPS worker must ask questions to determine if there is an allegation of abuse or neglect with the minor parent as an alleged victim. If it is determined that there is an allegation of abuse or neglect with the minor parent as an alleged victim, the information must be reported to a screener.

(E) When interviewing an alleged perpetrator who is the parent or caregiver, the CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(3) Gather safety-related information through interviews and observation. The CPS worker must begin to gather safety-related information through interviews and observation as outlined in OAR 413-015-0422, "Gather Safety Related Information through Interview and Observation".

(4) Determine if there is a present danger safety threat or impending danger safety threat. During the initial contact, the CPS worker must determine, based on the information obtained at that time, if there is a present danger safety threat or impending danger safety threat to the child as outlined in OAR 413-015-0425, "Determine if there is a Present Danger Safety Threat or Impending Danger Safety Threat".

(5) Documentation of the Initial Contact. The CPS worker must document the dates of attempted and successful contacts in the Department's electronic information system. If it was not possible during the initial contact for the CPS worker to successfully complete a required contact, the CPS worker must document why contact was not made and must complete the face-to-face contact and interview as soon as possible.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 418.785, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 15-2009, f. & cert. ef. 11-3-09; CWP 2-2010(Temp), f. & cert. ef. 2-12-10 thru 8-11-10; CWP 4-2010, f. & cert. ef. 4-2-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0432
Develop Safety Plans

(1) When a present danger safety threat or impending danger safety threat is identified, a CPS worker must put a safety plan in place to manage the threat. There are three types of safety plans: the protective action plan which manages present danger safety threats, and the initial safety plan and the ongoing safety plan, which manage impending danger safety threats.

(2) Shared requirements for a protective action plan, initial safety plan, or ongoing safety plan:

(a) When developing a protective action plan, initial safety plan, or ongoing safety plan, the CPS worker must:

(A) Assure the plan focuses on and controls the identified present danger safety threat or impending danger safety threat;

(B) Not use a parent or caregiver who is the alleged perpetrator of physical abuse, sexual abuse, or domestic violence to provide protection or any other adult who was aware of the threats to child safety and did not protect;

(C) Include safety service providers that have been confirmed to be suitable to provide safety for the child (refer to OAR 413-015-1200 through 413-015-1230, "Assessment of an Individual as a Safety Service Provider");

(D) Involve the child's parent or caregiver;

(E) Use the Indian child's tribe as a resource, unless the tribe declines, when the CPS worker knows or has reason to know the child is an Indian child; and

(F) Assure it has been approved by a Department supervisor.

(b) The protective action plan, initial safety plan, or ongoing safety plan, whether in-home or out-of-home, must:

(A) Be a written document between the parent or caregiver and the Department;

(B) Provide a detailed description of the present danger safety threat or impending danger safety threat;

(C) Describe how identified present danger safety threats or impending danger safety threats will be managed, including:

(i) If impending danger safety threats will be managed in-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were met;

(ii) If impending danger safety threats will be managed out-of-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were not met; and

(iii) How the plan will be monitored.

(D) Identify the safety service providers and the safety services necessary to implement the plan; and

(E) Establish the time commitments and availability of those involved in the plan.

(c) The CPS worker must determine whether the impending danger safety threat will be managed with an in-home or out-of-home initial safety plan or ongoing safety plan by determining how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

(A) The CPS worker must understand how the impending danger safety threat is occurring as required in OAR 413-015-0428, "Identify How the Impending Danger Safety Threat is Occurring", and use the information about how the impending danger safety threat is occurring to develop the least intrusive plan that can manage the identified impending danger safety threat occurring within the particular family;

(B) An in-home initial safety plan or in-home ongoing safety plan is required when all of the following in-home safety plan criteria are met:

(i) There is a home-like setting where the parent and child live.

(ii) The home is calm enough to allow safety service providers access and activities to occur.

(iii) At least one parent is willing to cooperate with the plan.

(iv) The necessary safety activities and resources are available to implement the plan.

(C) An out-of-home initial safety plan or out-of-home ongoing safety plan is required when any of the in-home safety plan criteria outlined in (B)(i) through (iv) above are not met.

(d) A protective action plan, initial safety plan, or ongoing safety plan may be a combination of in-home and out-of-home in order to assure the least intrusive intervention.

(e) The CPS worker must make modifications to the protective action plan, initial safety plan, or ongoing safety plan, as necessary, to continue to control the identified present danger safety threats or impending danger safety threats.

(f) When assessing an allegation of sexual abuse, if a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the local district attorney responsible for the MDT in the county where the child resides that a plan of this type has been developed, pursuant to ORS 418.800. The notice must:

(A) Be in writing; and

(B) Be provided within three business days of the date the parent or caregiver leaves the family home.

(g) When a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home without their children or have their children leave the family home without them, the CPS worker must, in consultation with a supervisor, file a petition alleging the child is within the jurisdiction of the juvenile court pursuant to ORS 419B.100 within 10 calendar days of the date the parent or caregiver or their children leave the home if the plan is still necessary to assure child safety and will continue to be necessary for the immediate future.

(3) Additional Requirements for a Protective Action Plan. Refer to OAR 413-015-0435, "Develop a Protective Action Plan", for additional requirements when developing a protective action plan.

(4) Additional Requirements for an Initial Safety Plan. Refer to OAR 413-015-0437, "Develop an Initial Safety Plan", for additional requirements when developing an initial safety plan.

(5) Additional Requirements for an Ongoing Safety Plan. Refer to OAR 413-015-0450, "Develop an Ongoing Safety Plan", for additional requirements when developing an ongoing safety plan.

(6) Documentation. The CPS worker must provide a detailed description of the protective action plan, initial safety plan, or ongoing safety plan developed to manage the present danger safety threat or impending danger safety threat. Documentation must be completed in the Department's electronic information system within five business days following the identification of the threat and must include:

(a) All requirements outlined in paragraphs (2)(b)(A) through (G) of this rule;

(b) A summary of the parents' and caregivers' agreement to and acceptance of the plan; and

(c) The date the plan was reviewed by a supervisor and the name of the supervisor who reviewed it.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050
Hist.: CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0450
Develop an Ongoing Safety Plan

(1) At the completion of the CPS assessment when the CPS worker determines, through an analysis of the safety-related information, that a child is unsafe, the CPS worker must develop and document an ongoing safety plan unless completing a CPS assessment involving the home of a Department certified foster parent or relative caregiver. The purpose of the ongoing safety plan is to control the impending danger safety threats as they are uniquely occurring within a particular family.

(2) Requirements for an Ongoing Safety Plan. When developing an ongoing safety plan the CPS worker must assure all requirements in OAR 413-015-0432, "Develop Safety Plans", are met and:

(a) Use a Child Safety Meeting unless a supervisor approved an exception;

(b) Include conditions for return when an out-of-home ongoing safety plan is developed; and

(c) Re-evaluate the initial safety plan, if one is in place, to determine if it is appropriate and sufficient as an ongoing safety plan and re-confirm all commitments with all safety service providers identified in the initial safety plan if it is to become an ongoing safety plan.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050
Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-0540
Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line with the alleged child victim's custodial parent or caregiver and the alleged child victim as follows:

(1) As required by OAR 413-015-0420, notify the custodial parents or caregivers of the intent to interview an alleged child victim.

(2) Have face-to-face contact with and interview the alleged child victim or victims. The purpose of the face-to-face contact and each interview is to gather information regarding possible child abuse, observe any signs of neglect or child injuries, determine if there are other alleged child victims, and assess the immediate safety of the child or children.

(3) Have face-to-face contact with and interview each custodial parent or caregiver of the alleged child victim or victims. The purpose of this face-to-face contact and interview is to find out what the parent or caregiver knows about the alleged child abuse or neglect and to gather information about their ability and willingness to protect.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-1105
Purpose

(1) The primary purposes of LEDS access in local Child Welfare offices are to assist staff in making decisions about child safety, specifically related to child protective services, assessing safety service providers, and emergency certification as outlined in these rules (OAR 413-015-1100 to 413-015-1125). Criminal history information obtained from LEDS will be considered, along with other safety-related information, to:

(a) Identify present danger safety threats and impending danger safety threats; or

(b) Determine if behavior that is revealed by criminal history is inconsistent with providing care to children or having access to children.

(2) These rules do not address criminal records checks for non-emergency certification or adoption approval. Criminal records checks for non-emergency certification or adoption approval are governed by OAR 413-120-0400 to 413-120-0470.

Stat. Auth.: ORS 181.537, 409.050 & 418.005
Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 5-2010(Temp), f. & cert. ef. 6-15-10 thru 12-12-10; CWP 21-2010, f. & cert. ef. 11-15-10; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-9030
Screening CPS Information — Determining Department's Response, Type of CPS Assessment, and Response Time Lines

Except as provided below, screeners in DR implementation counties must comply with OAR 413-015-0200 through 413-015-0225. OAR 413-015-0210(1) through (3) are replaced by the following:

(1) After the screener completes activities required by OAR 413-015-0205, and determines the information received is CPS information, the

screener must determine the Department response, either CPS assessment required or close at screening. If a CPS assessment is required, the screener must determine the type of CPS assessment and the time line for the Department response.

(2) CPS assessment required. A CPS assessment is required if:

(a) The screener determines that information received constitutes a report of child abuse or neglect, as defined in ORS 419B.005, and the information indicates:

(A) The alleged perpetrator is a legal parent of the alleged child victim;

(B) The alleged perpetrator resides in the alleged child victim's home;

(C) The alleged perpetrator may have access to the alleged child victim, and the parent or caregiver may not be able or willing to protect the child; or

(D) The alleged child abuse occurred in a day care facility, the home of a Department certified foster parent or relative caregiver, or a private child-caring agency that is not a Children's Care Provider (CCP).

(b) A tribe or law enforcement agency (LEA) requests assistance from the Department with an investigation of child abuse or neglect, and a CPS supervisor agrees that assistance from the Department is appropriate.

(3) Type of CPS Assessment. If the screener determines that a CPS assessment is required, the screener must:

(a) Determine the type of CPS assessment required. The screener must determine if the report is assigned for a traditional response assessment or an alternative response assessment.

(A) Traditional Response Assessment. This type of CPS assessment is required when the report alleges or the information gathered indicates:

(i) The child has suffered or could likely suffer severe harm;

(ii) The abuse occurred in a day care facility, the home of a Department certified foster parent or relative caregiver, or a private child-caring agency that is not a Children's Care Provider (CCP);

(iii) The perpetrator is a day care employee, certified foster parent or relative caregiver, or a Department of Human Services employee;

(iv) There are multiple allegations in the same report and any of the allegations meet one of the criteria outlined in (i) through (iii) of this paragraph for a traditional response assessment;

(v) There is a prior report of child abuse or neglect that has not been assessed because the Department was unable to locate the family and the prior allegation or the current allegation meets the criteria for a traditional response assessment;

(vi) There is an open traditional response assessment and the date the open traditional response assessment was assigned is within 60 days of the date the new report will be assigned; or

(vii) There is an open Department case with an identified impending danger safety threat.

(B) Alternative Response Assessment. This type of CPS assessment is required when the report alleges or the information gathered indicates the child has suffered or could likely suffer harm, but the harm is not severe harm and none of the conditions outlined in (A)(i) through (vii) of this rule apply.

(b) Consult with a CPS supervisor. The screener must consult with the CPS supervisor or designee when the screener determines the type of CPS assessment required is a traditional response assessment and there is an open alternative response assessment.

(c) Document the type of CPS assessment required. The screener must document the type of CPS assessment required and document the justification for the determination.

(4) Response Time Lines. If the screener determines that a CPS assessment is required, the screener must:

(a) Determine the CPS assessment response time line. The time line for the Department response refers to the amount of time between when the report is received at screening and when the CPS worker is required to make an initial contact. When determining the response time, the screener must take into account the location of the child, how long the child will be in that location, and access that others have to the child.

(A) Traditional Response Assessment. The screener is required to assign the following response time lines for a traditional response assessment:

(i) A "within 24 hours" response time line unless (ii) below applies.

(ii) A "within five calendar days" response time line is only permitted for a traditional response assessment when the screener can clearly document how the information indicates child safety will not be compromised or an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(B) Alternative Response Assessment. The screener is required to assign the following response time lines for an alternative response assessment:

(i) A "within five calendar days" response time line is required unless (ii) below applies.

(ii) A "within 24 hours" response time line is only required for an alternative response assessment when the information indicates:

(I) A child is in danger right now; or

(II) A child has a current injury as a result of the alleged abuse or neglect.

(b) Complete a screening report form immediately when a "within 24 hour" response time line is assigned or the same day when a "within five calendar days" response time is assigned. A CPS supervisor may grant an extension for the completion of a screening report form as provided in OAR 413-015-0220.

(c) Refer the CPS assessment to the appropriate county as described in OAR 413-015-0213.

Stat. Auth: ORS 409.027, 409.050, 418.005, 418.598
Stats. Implemented: ORS 409.010, 409.185, 418.005, 418.015, 418.580, 419B.020
Hist.: CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-015-9040
Assessment

(1) Except as provided in this rule, CPS workers in DR implementation counties must comply with OAR 413-015-0400 through 413-015-0485.

(2) Overview. The following outlines the primary components of all CPS assessments and the components unique to traditional response assessment and alternative response assessment.

(a) Completing a CPS assessment, whether traditional response assessment or alternative response assessment, involves all of the following:

(A) Making efforts to schedule the initial contact when a response timeline of "within five calendar" days is assigned.

(B) Making face-to-face contact with the alleged victim, his or her siblings, his or her parent or caregiver, other children and adults living in the home, and the alleged perpetrator.

(C) Accessing and viewing the home environment.

(D) Gathering safety-related information through interviews and observation.

(E) Determining if there is a present danger safety threat.

(F) Determining if there is an impending danger safety threat by applying the safety threshold criteria:

(i) Imminent;

(ii) Observable;

(iii) Vulnerable child;

(iv) Out of control; and

(v) Severity.

(G) Developing a protective action plan when a child is determined to be unsafe due to a present danger safety threat.

(H) Developing an initial safety plan when a child is determined to be unsafe due to an impending danger safety threat.

(I) Developing an ongoing safety plan when a child is determined to be unsafe from an impending danger safety threat at the conclusion of a CPS assessment.

(J) Determining whether the initial safety plan or ongoing safety plan is the least intrusive plan sufficient to manage child safety by identifying how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

(K) Developing conditions for return when an out-of-home ongoing safety plan is established.

(L) Determining whether a family has moderate to high needs when a child is determined to be safe.

(M) Referring a family for a strengths and needs assessment and subsequently for community services when a family is determined to have moderate to high needs and accepts the referrals.

(b) In addition to the components of a CPS assessment outlined in paragraphs (a)(A) through (M) of this section, completing a traditional response assessment includes determining if there is reasonable cause to believe that child abuse or neglect occurred.

(c) In addition to the components of a CPS assessment outlined in paragraphs (a)(A) through (M) of this section, completing an alternative response assessment includes offering the family the option of having a community partner or support person accompany the worker when a response timeline of "within five calendar" days is assigned.

(3) Make Initial Contact. When completing a traditional response assessment or an alternative response assessment the CPS worker must comply with OAR 413-015-0420, "Make Initial Contact", and the additional requirements outlined in this section when a response timeline of "within five calendar days" is assigned:

(a) The CPS worker must make efforts to schedule the initial contact; and

(b) The CPS worker must, when completing an alternative response assessment:

(A) Offer the family the option of having a community partner or support person accompany the worker on initial contact;

(B) Obtain a release of information signed by the parent or caregiver specific to the identified community partner or support person; and

(C) Document, if applicable, whether the CPS worker completed the initial contact with a community partner or support person. When a community partner or support person was not present at initial contact, the CPS worker must document why not. When a community partner or support person was present, the CPS worker must document who was present.

(4) Change from Alternative Response Assessment to Traditional Response Assessment. When changing the type of CPS assessment from alternative response assessment to traditional response assessment the CPS worker must:

(a) Assure one of the following applies:

(A) Any of the criteria outlined in 413-015-9030(3)(a)(A)(i) through (vi);

(B) A referral is received on an open alternative response assessment within 60 days of the date the open assessment was assigned and the new referral meets the screening criteria to assign as a traditional response assessment;

(C) The CPS worker filed a petition alleging the child is within the jurisdiction of the juvenile court pursuant to ORS 419B.100; or

(D) The CPS worker determined the child is unsafe at the conclusion of the CPS assessment and an ongoing safety plan will be established and the case will be opened for services.

(b) Assure the decision is approved by a Department supervisor; and

(c) Document in the Department's electronic information system the decision to change from alternative response assessment to traditional response assessment and explain the basis for the decision.

(5) Make Child Safety Decision and Determine Whether to Open a Case. The CPS worker must comply with the requirements outlined in this section which replaces OAR 413-015-0445, "Child Safety Decision".

(a) After all the necessary information is gathered for the CPS assessment and the disposition has been determined, the CPS worker must determine if the child is safe or unsafe at the conclusion of the CPS assessment. To make a child safety decision at the conclusion of a CPS assessment, the CPS worker must again determine if an impending danger safety threat is present as outlined in OAR 413-015-0425, "Determine if there is a Present Danger Safety Threat or an Impending Danger Safety Threat".

(b) When at the conclusion of the CPS assessment the CPS worker determines one or more impending danger safety threats are present, including a previously identified impending danger safety threat that has not been eliminated, the CPS worker must conclude the child is unsafe. When the CPS worker concludes the child is unsafe at the conclusion of the CPS assessment, the CPS worker must:

(A) Determine how the impending danger safety threat is occurring to support the development of an ongoing safety plan as outlined in OAR 413-015-0428, "Identify How the Impending Danger Safety Threat is Occurring";

(B) Develop an ongoing safety plan as outlined in OAR 413-015-0450, "Develop an Ongoing Safety Plan";

(C) Complete the CPS assessment; and

(D) Open a case.

(c) When at the conclusion of the CPS assessment the CPS worker determines no present danger safety threats or impending danger safety threats are present and any identified previously have been eliminated, the CPS worker must conclude the child is safe. When the CPS worker concludes the child is safe at the conclusion of the CPS assessment, the CPS worker must:

(A) Dismiss the protective action plan or initial safety plan if one is in place; and

(B) Determine if the family has moderate to high needs unless completing a CPS assessment involving the home of a Department certified foster parent or relative caregiver.

(d) When the CPS worker determines the family does not have moderate to high needs the CPS worker must complete and close the CPS assessment.

(e) When the CPS worker determines the family does have moderate to high needs, the CPS worker must offer the family the option to have a strengths and needs assessment completed by a strengths and needs assessment provider:

(A) If the family declines the offer to have a strengths and needs assessment completed the CPS worker must:

(i) Offer the family referrals to relevant non-contracted community services as available;

(ii) If the family accepts the offer, the CPS worker must refer the family to relevant non-contracted community services as available; and

(iii) Complete and close the CPS assessment.

(B) If the family accepts the offer to have a strengths and needs assessment completed the CPS worker must:

(i) Refer the family to a strengths and needs assessment provider;

(ii) Meet with the family and the strengths and needs assessment provider after the completion of the strengths and needs assessment, discuss contracted and non-contracted community service referral options, offer relevant community service referrals as available, and identify the family's preferences;

(iii) If the family accepts the offer for community service referrals, refer the family to relevant contracted or non-contracted community services as available.

(C) Complete and close the CPS assessment.

(f) The CPS worker must document in the Department's electronic information system the child safety decision including all of the following:

(A) If the child is safe and the assessment will be closed, or if the child is unsafe and the case will be opened.

(B) If the child is safe:

(i) Whether the family was determined to have moderate to high needs and the basis for the determination;

(ii) Whether the family accepted or declined to participate in a strengths and needs assessment and if they declined whether the family accepted the offer for relevant non-contracted community service referrals;

(iii) Whether the family accepted or declined to participate in services recommended as the result of the strengths and needs assessment; and

(iv) If applicable, what contracted or non-contracted community services were declined or accepted.

(6) CPS Assessment Documentation, Supervisory Review Requirements, and Extensions.

(a) The CPS worker must comply with OAR 413-015-0475, "CPS Assessment Documentation and Supervisory Review Requirements", with the exception of section (2) which this subsection replaces. The CPS worker must complete the CPS assessment and electronically submit the CPS assessment for review by a CPS supervisor, within 45 days of the day that the information alleging child abuse or neglect is received by the screener, except as provided in subsection (b) of this section.

(b) This subsection replaces OAR 413-015-0480, "CPS Assessment Extensions". The CPS supervisor may approve a one-time extension of an additional 15 days for completion of the CPS assessment if the supervisor has confirmed critical information (information necessary to determine child safety or a child abuse or neglect disposition) is outstanding or, if applicable, the strengths and needs assessment is not complete. Additional extension of time may be approved by the Child Welfare program manager if the ability to obtain critical information is beyond the reasonable control of the CPS worker.

Stat. Auth: ORS 409.027, 409.050, 418.005 & 418.598
Stats. Implemented: ORS 409.010, 409.185, 418.005, 418.015, 418.580 & 419B.020
Hist.: CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

413-200-0414
Department Actions During Screening

(1) Screener Actions.

(a) When a screener receives information involving the home of a certified family, the screener must--

(A) Refer to and follow Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0200 to 413-015-0225 to gather and share information;

(B) Consult with the CPS supervisor before determining the Department's response;

(C) Notify the assigned caseworker of each child or young adult placed in the home, each assigned caseworker's supervisor, the assigned certifier, and the certifier's supervisor of all information received; and

(D) If the information is closed at screening as described in Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0210(4):

(i) Document the information in provider case notes in the Department's information system; and

(ii) Notify the individuals listed in paragraph (C) of this subsection that the information was closed at screening.

(b) When a screener receives information alleging abuse or neglect of a young adult living in the home of a certified family, the screener must provide the information to the young adult's caseworker; and

(A) Provide the information to the Department's Aging and People with Disabilities Division local office, Community Developmental Disabilities Program, or Community Mental Health Program when the young adult is an individual with a diagnosed physical, developmental, or mental disability, respectively; or

(B) Provide the information to law enforcement.

(2) Certifier Actions. When the assigned certifier is notified by a screener that information involving the home of a certified family was closed at screening, the certifier must examine the information received and follow Child Welfare Policy II-B.1.1., "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0270 to 413-200-0296).

(3) Assigned Caseworker Actions.

(a) When a report of information alleging abuse or neglect of a young adult has been shared with the Department's Aging and People with Disabilities Division local office, Community Developmental Disabilities Program, or Community Mental Health Program because the young adult is an individual with a diagnosed physical, developmental, or mental disability, the young adult's caseworker must coordinate the Department's response.

(b) When a report of information alleging abuse or neglect of a young adult has been shared with law enforcement, the young adult's caseworker must coordinate the Department's response with law enforcement.

(c) When a report is received alleging that a child or young adult in substitute care in the home of a certified family may have been subjected to abuse or neglect, and the screener determines that the report constitutes a report of child abuse or neglect as defined in ORS 419B.005, within three business days of the Department's receipt of the report, the caseworker of the child or young adult in substitute care who is the alleged victim must notify the following individuals that a report was received:

(A) The attorney for the child or young adult;

(B) The court appointed special advocate (CASA) for the child or young adult;

(C) The parents of the child or young adult;

(D) Any attorney representing the parents of the child or young adult; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(d) The notification of the parents of the child or young adult and any attorney representing the parents of the child or young adult in paragraphs (3)(c)(C) and (D) of this rule is not required if the notification may interfere with an investigation or assessment or jeopardize the safety of the child or young adult. The CPS supervisor, or the supervisor of a caseworker of the child or young adult may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14

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Rule Caption: Revising rules regarding the rights of children in the custody of the Department

Adm. Order No.: CWP 1-2015

Filed with Sec. of State: 1-1-2015

Certified to be Effective: 1-1-15

Notice Publication Date: 12-1-2014

Rules Amended: 413-010-0180, 413-010-0185

Subject: The Department of Human Services, Office of Child Welfare Programs, is revising rules regarding the rights of children and young adults in the legal custody of the Department to expressly establish the Oregon Foster Children's Bill of Rights and to list in rule the rights of foster children specified in ORS 418.201, as required by ORS 418.202. These rule changes do not make any substantive changes to the rights of children or young adults in the legal custody of the Department. The rules are also revised to add references and clarify language.

Rules Coordinator: Kris Skaro—(503) 945-6067

413-010-0180

Rights of Children and Young Adults

(1) Every child and young adult in the legal custody of the Department has rights, including but not limited to the right:

(a) To be placed in the least restrictive environment that appropriately meets individual needs;

(b) To be provided basic needs such as adequate food, clothing, and shelter;

(c) To receive appropriate care, supervision, and discipline, and to be taught to act responsibly and respect the rights of others;

(d) To be provided routine and necessary medical, dental, and mental health care and treatment;

(e) To be provided with free and appropriate public education;

(f) To be protected from physical and sexual abuse, emotional abuse, neglect, and exploitation;

(g) To be provided services designed for reunification with the parent or guardian except when there is clear evidence that the parent or guardian may not protect the child's or young adult's welfare;

(h) To be provided services to develop a safe permanent alternative to the family, when family resources are not available;

(i) To be accorded the least restrictive legal status that is consistent with the need for protection, to have the Department present its position on best interests to the court, and to attend court hearings and speak directly to the judge;

(j) To receive respect, be nurtured, and attend activities in accordance with his or her background, religious heritage, race, and culture within reasonable guidelines as set by the case plan, the visitation plan, and the court;

(k) To visit and communicate with a parent or guardian, siblings, members of his or her family, and other significant people within reasonable guidelines as set by the case plan, the visitation plan, and the court;

(l) To be involved, in accordance with his or her age and ability and with the law, in making major decisions that affect his or her life, to participate in the development of his or her case plan, permanency plan, and comprehensive transition plan and to discuss his or her views about the plans with the judge;

(m) To receive encouragement and be afforded reasonable opportunities to participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level; and

(n) To earn and keep his or her own money and to receive guidance in managing resources to prepare him or her for living independently.

(2) This section establishes the Oregon Foster Children's Bill of Rights. In addition to the rights listed in section (1) of this rule, every child and young adult in the legal custody of the Department who is or was in substitute care has the following rights, as provided in ORS 418.201:

(a) To have the ability to make oral and written complaints about care, placement, or services that are unsatisfactory or inappropriate, and to be provided with information about a formal process for making complaints without fear of retaliation, harassment, or punishment.

(b) To be notified of, and provided with transportation to, court hearings and reviews by local citizen review boards pertaining to the child's or young adult's case when the matters to be considered or decided upon at the hearings and reviews are appropriate for the child or young adult, taking into account the age and developmental stage of the child or young adult.

(c) To be provided with written contact information of specific individuals whom the child or young adult may contact regarding complaints, concerns, or violations of rights, that is updated as necessary and kept current.

(d) When the child or young adult is 14 years of age or older, to be provided with written information within 60 days of the date of any placement or any change in placement, regarding:

(A) How to establish a bank account in the child's or young adult's name as allowed under state law;

(B) How to acquire a driver license as allowed under state law;

(C) How to remain in foster care after reaching 18 years of age;

(D) The availability of a tuition and fee waiver for a current or former foster child under ORS 351.293;

(E) How to obtain a copy of the child's or young adult's credit report, if any;

(F) How to obtain medical, dental, vision, mental health services, or other treatment, including services and treatments available without parental consent under state law; and

(G) A transition toolkit, including a comprehensive transition plan.

(e) With respect to a child's or young adult's rights under the federal and state constitutions, laws, including case law, rules, and regulations:

(A) To receive a document setting forth such rights that is age and developmentally appropriate within 60 days of the date of any placement or any change in placement;

(B) To have a document setting forth such rights that is age and developmentally appropriate posted at the residences of all foster parents, child-caring agencies, and independent resident facilities; and

(C) To have an annual review of such rights that is age and developmentally appropriate while the child or young adult is in substitute care.

(f) To be provided with current and updated contact information for adults who are responsible for the care of the child or young adult and who are involved in the child's or young adult's case, including but not limited to caseworkers, caseworker supervisors, attorneys, foster youth advocates and supporters, court appointed special advocates, local citizen review boards, and employees of the Department that provide certification of foster parents, child-caring agencies, and independent resident facilities.

(g) To have a hotline phone number that is available to the child or young adult at all times for the purposes of enabling the child or young adult to make complaints and assert grievances regarding the child's or young adult's care, safety, or well-being.

(3) Children and young adults in the legal custody of the Department may have other rights not specified in this rule as appropriate to the child's or young adult's age and developmental stage.

Stat. Auth.: ORS 418.005 & 418.201
Stats. Implemented: ORS 418.005, 418.200, 418.201 & 418.202
Hist.: SOSCF 6-1998, f. 2-10-98, cert. ef. 2-15-98; CWP 14-2009, f. & cert. ef. 11-3-09; CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14; CWP 1-2015, f. & cert. ef. 1-1-15

413-010-0185
Department Responsibilities

(1) The Department will develop information and materials to be provided to children and young adults in the legal custody of the Department who are or were in substitute care regarding their rights under OAR 413-010-0180(2). The Department will review and update the information and materials periodically, and may develop other information and materials it determines will be helpful in informing children and young adults about their rights and how to assert and protect them.

(2) The Department will make training available to caseworkers and other employees who will provide the information and materials specified in section (1) to children and young adults, to ensure the information and materials are provided in a manner that is timely and appropriate to age and developmental stage.

(3) The Department will make training available to caseworkers and other employees about the Department's obligations under ORS 418.201, OAR 413-010-0180(2), and this rule, to ensure the obligations are carried out in a manner that is timely and appropriate to age and developmental stage.

(4) The Department will develop information and materials and make training available to substitute caregivers regarding their obligations to ensure the children and young adults in their care are informed of their rights under OAR 413-010-0180(2) in a manner that is timely and appropriate to age and developmental stage.

(5) The Department will develop and publish a process for children and young adults in the legal custody of the Department who are or were in substitute care to make complaints regarding their care. The process will include a phone number that is available at all times.

Stat. Auth.: ORS 418.005 & 418.202
Stats. Implemented: ORS 418.005, 418.201 & 418.202
Hist.: CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14; CWP 1-2015, f. & cert. ef. 1-1-15

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Rule Caption: Amending child welfare rules related to personal care services for children and young adults
Adm. Order No.: CWP 2-2015
Filed with Sec. of State: 1-1-2015
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 413-090-0110, 413-090-0120, 413-090-0133, 413-090-0135, 413-090-0136, 413-090-0140, 413-090-0150, 413-090-0210
Subject: The Department of Human Services, Office of Child Welfare Programs, is amending the rules related to personal care services for children and young adults placed with a foster parent or relative caregiver. The rule changes: allow the Department to pay for personal care services using federal funds sooner if there is a delay in the process; clarify when personal care services end and a new assessment is required; add rating criteria that are specific to infants; add references to applicable forms; update terminology, position titles, and references; clarify language; and correct punctuation.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-090-0110
Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0210:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Contract registered nurse" means a licensed registered nurse under a contract with the Department who provides nursing assessment, consultation, teaching, delegation, or on-going nursing services to a child or young adult in the care or custody of the Department.

(4) "Delegated nursing task" means a task, normally requiring the education and license of a registered nurse (RN) and within the RN scope of practice to perform, that an RN authorizes an unlicensed person to perform.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Legally responsible relative" means the parent or stepparent of a child or young adult or a person related to the child or young adult by blood or marriage who has legal custody or legal guardianship of the child or young adult.

(8) "Level of personal care payment" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult based on the child's or young adult's need for personal care services as determined by applying the personal care services algorithm to the results of the personal care services rating scale.

(9) "Personal Care Nurse Coordinator" means a registered nurse (RN) who is a licensed registered nurse employed by the Department to provide oversight of contract registered nurses and personal care services authorized through the Department.

(10) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(11) "Personal care services assessment" means an evaluation by a registered nurse of a child or young adult's ability to perform the functional activities required to meet the child or young adult's daily needs.

(12) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

(a) The determination that the individual is a qualified provider;

(b) The frequency or intensity of each personal care service to be provided; and

(c) The date personal care services begin.

(13) "Qualified provider" means an individual who:

(a) Is authorized by the Department through the contract registered nurse or Personal Care Nurse Coordinator;

(b) Demonstrates by background, skills, and abilities the capability to safely and adequately provide the authorized personal care services;

(c) Maintains a drug-free household;

(d) Has been approved through the background check process described in Child Welfare Policy I-G.1.4, "Criminal Records Check Requirements for Relative Caregivers, Foster Parents, Adoptive Resources, and Other Persons in the Household," OAR 413-120-0400 to 413-120-0475, or under DHS Criminal History Checks rules, OAR 407-007-0200 to 407-007-0370; and

(e) Is not the parent, step-parent, or legally responsible relative of the child or young adult eligible for personal care services.

(14) "Registered nurse" means an individual licensed and registered to practice nursing.

(15) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(16) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0120
Scope of Services

(1) Personal care services are provided directly to the eligible child or young adult and do not include respite or other services, nor are they implemented for the purpose of benefiting others in the household or the household in general.

(2) Personal care services include:

(a) Mobility, transfers, repositioning — assisting a child or young adult with ambulation or transfers with or without an assistive device, turning the individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(b) Basic personal hygiene — providing or assisting a child or young adult with needs such as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(c) Toileting, bowel and bladder care — assisting a child or young adult to and from bathroom, on and off a toilet, commode, bedpan, urinal or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care, or bowel care;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(e) Medication management — assisting with ordering, organizing, and administering prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications; and

(f) A delegated nursing task.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0133
Conducting a Personal Care Services Assessment

(1) When a child or young adult with a diagnosed physical or mental impairment appears to require personal care services and the caseworker becomes aware of the apparent need for personal care services, the caseworker must refer the child or young adult to the contract registered nurse or the Personal Care Nurse Coordinator for an assessment.

(2) When a child or young adult with an approved personal care services assessment or an existing personal care services plan moves to a new foster parent or relative caregiver, the caseworker must refer the child or young adult to the contract registered nurse or the Personal Care Nurse Coordinator for an assessment.

(3) Upon receipt of a referral, the contract registered nurse or the Personal Care Nurse Coordinator must conduct a personal care services assessment.

(4) To conduct the personal care services assessment, the contract registered nurse or the Personal Care Nurse Coordinator must:

(a) Review available medical records of the child or young adult;

(b) Meet with the child or young adult and the foster parent or relative caregiver;

(c) Gather information about the child or young adult's condition and functioning;

(d) Assess the child or young adult's ability to perform functional activities necessary to meet his or her daily needs at a level appropriate for the child or young adult's chronological age;

(e) Document the findings of the personal care services assessment using the Department's Personal Care Services Assessment form that is applicable to the age of the child or young adult; and

(f) Submit the completed personal care services assessment to the Personal Care Nurse Coordinator.

(5) The Personal Care Nurse Coordinator must:

(a) Review the findings of the personal care services assessment;

(b) Apply the rating scale in Exhibit 1 to the personal care services assessment;

(c) Determine whether the child or young adult meets the threshold for a level of personal care payment;

(d) Determine the level of personal care payment; and

(e) When the personal care services assessment scores a child or young adult's level of personal care needs at Level 4 based on the rating scale in Exhibit 1, determine the additional payment and the intensive personal care services required to meet the child or young adult's identified needs, which may involve consulting with the foster parent, relative caregiver, or others involved in the child or young adult's care.

(6) The responsibilities set forth in section (5) of this rule may be conducted by another medical professional employed by or under contract with the Department when the Personal Care Nurse Coordinator is unavailable.

[ED. NOTE: Exhibits & forms referenced are available from the Agency.]
Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0135
Provider Eligibility

(1) Personal care services may be provided only by a qualified provider.

(2) The contract registered nurse or the Personal Care Nurse Coordinator may authorize a qualified provider to provide personal care services to a child or young adult in the care or custody of the Department if the contract registered nurse or Personal Care Nurse Coordinator determines that the provider meets the definition of a qualified provider in OAR 413-090-0110.

(3) The qualified provider must sign the personal care services plan with the Department and agree to provide the personal care services to the child or young adult described in the personal care services plan.

(4) The qualified provider may be authorized to provide personal care services when the personal care services assessment has been completed and the contract registered nurse or Personal Care Nurse Coordinator has verified that the provider is a qualified provider.

Stat. Auth. ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0136
Developing the Personal Care Services Plan

(1) After conducting the personal care services assessment when it has been determined that a child or young adult is eligible for personal care services, the contract registered nurse or Personal Care Nurse Coordinator must develop a personal care services plan using the Department's Personal Care Services Plan form.

(2) The personal care services plan must:

(a) Specify the frequency or intensity of each personal care service;

(b) Identify the qualified provider to provide the personal care service;

(c) If the plan includes a delegated nursing task, the personal care services plan must include:

(A) The written authorization of the registered nurse permitting the qualified provider to perform the delegated nursing task;

(B) The written instructions on how to perform the delegated nursing task;

(C) How frequently the child or young adult is to be reassessed with respect to the delegated nursing task;

(D) How the qualified provider is to be supervised; and

(E) How frequently the qualified provider is to be reevaluated.

(d) Identify the date that the personal care services are to begin and the date that the personal care services plan ends; and

(e) Be signed by the contract registered nurse or Personal Care Nurse Coordinator and each qualified provider providing services under the personal care services plan.

(3) If the contract registered nurse or Personal Care Nurse Coordinator determines that the child or young adult requires a delegated nursing task, the contract registered nurse or Personal Care Nurse Coordinator must follow the requirements in Oregon State Board of Nursing rules, OAR 851-047-0000 to 851-047-0040.

(a) An authorization permitting a qualified provider to perform a nursing task does not permit the qualified provider to perform the task for a different child or young adult, and the authorization may not be transferred.

(b) The skill of the qualified provider and the condition of the child or young adult must be reevaluated as appropriate.

(c) The registered nurse may rescind the delegation, as provided in OAR 851-047-0030(7), and revise the personal care services plan accordingly.

[Ed. Note: The form referenced is available from the Department.]
Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0140
Periodic Review of Personal Care Services Eligibility

(1) A child or young adult's eligibility for personal care services must be reviewed annually from the initial date of the personal care services plan, unless an earlier date for reassessment has been approved in the personal care services plan.

(2) The child or young adult's caseworker may refer the child or young adult for a personal care services reassessment earlier than the date approved in the personal care services plan if the child or young adult's need for personal care services has changed. The Personal Care Nurse Coordinator must approve the referral.

(3) The Department must send a notice to the foster parent or relative caregiver, on behalf of the child or young adult, at least 14 days prior to conducting a personal care services reassessment. The notice must include:

(a) A description and explanation of the personal care services assessment process;

(b) An explanation of the process for appealing the results of the personal care services assessment; and

(c) A description of the foster parent or relative caregiver's right, on behalf of the eligible child or young adult, to set the date, time, and place of the personal care services assessment at a location that is convenient for him or her and to invite other persons to participate in the personal care services assessment.

(4) The contract registered nurse or Personal Care Nurse Coordinator must follow the process set forth in OAR 413-090-0133 when conducting a personal care services reassessment.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0150
Payment Determination

(1) Payment for the personal care services identified in the personal care services plan is based on the eligible child or young adult's personal care services at a level of personal care payment that corresponds to the needs identified in the personal care services assessment and is determined by the Department. The levels of personal care are set forth in Exhibit 1.

(a) If the eligible child or young adult qualifies as Level 1 (moderate care), the payment is a maximum of $207 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(b) If the eligible child or young adult qualifies as Level 2 (intermediate care), the payment is a maximum of $413 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(c) If the eligible child or young adult qualifies as Level 3 (advanced care), the payment is a maximum of $620 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(d) If the eligible child or young adult qualifies as Level 4 (intensive care), the payment is an amount authorized by the Department, based on the days within the month the child or young adult is eligible for and receives personal care services and on the intensity and frequency of the personal care services in conjunction with all other medical services provided for the child or young adult.

(2) Payment for personal care services is calculated based on the number of days personal care services were provided to the eligible child or young adult.

(3) Except as provided in section (4) of this rule, payment for personal care services is authorized by the Department when the personal care services assessment is completed and the contract registered nurse or Personal Care Nurse Coordinator has verified that the provider is a qualified provider.

(4) If the referral for a personal care services assessment was delayed, the Personal Care Nurse Coordinator may authorize payment before the assessment is completed when personal care services were provided by a qualified provider and there is documentation of the child's or young adult's personal care needs.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

413-090-0210
Termination of Personal Care Services and Payments

(1) Personal care services provided to a child or young adult are terminated when the child or young adult no longer meets the eligibility requirements under OAR 413-090-0130 or the child or young adult moves.

(2) Personal care services payments are made to the qualified provider as described in OAR 413-190-0150 until a personal care services plan is terminated or the date the child or young adult is no longer in the care of the foster parent or relative caregiver, whichever is earlier.

Stat. Auth. ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 418.005 & 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 2-2015, f. & cert. ef. 1-1-15

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Rule Caption: Changing rules relating to psychotropic medication management for children and young adults in substitute care
Adm. Order No.: CWP 3-2015
Filed with Sec. of State: 1-1-2015
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 413-070-0410, 413-070-0430, 413-070-0450, 413-070-0470, 413-070-0480, 413-070-0490
Subject: The Department of Human Services, Office of Child Welfare Programs, is amending its rules related to Psychotropic Medication Management, which describe the responsibilities of the substitute caregiver and the Department when a child or young adult in substitute care is prescribed or administered psychotropic medication. The primary change is to clarify that the Department authorizes, but does not consent to, the administration of psychotropic medication. Other changes are also made to update terminology, clarify language, correct grammar and punctuation, and add and update references.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-070-0410
Definitions

The following definitions apply to OAR 413-070-0400 to 413-070-0490:

(1) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.

(2) "Assessment" means the determination of a child or young adult's need for mental health services through interviewing the child or young adult and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The "assessment:"

(a) Addresses the current complaint or condition presented by the child or young adult;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Licensed medical professional" means an individual who meets the criteria of both of the following subsections:

(a) The individual holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician assistant licensed to practice in the State of Oregon.

(b) The individual's training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health assessment, and the ability to provide psychotropic medication management for children and young adults.

(7) "Medically accepted indication," defined in ORS 418.517, means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, recommended by the Drug Use Review Board, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(a) American Hospital Formulary Services drug information;

(b) United States Pharmacopoeia drug information or any successor publication;

(c) The DRUGDEX Information System; or

(d) Peer-reviewed medical literature.

(8) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(9) "Psychotropic medication," defined in ORS 418.517, means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(10) "Qualified mental health professional" means an individual who meets the requirements of both of the following subsections:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and is licensed by the State of Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy; or

(F) Bachelor's degree in occupational therapy and is licensed by the State of Oregon.

(b) Whose education and experience demonstrates the competencies to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Develop and supervise a treatment plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(11) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(12) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(13) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(14) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a child or young adult's mental or physical condition.

(15) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

413-070-0430

Department Records, Medication Review, and Consent and Authorization Requirements

(1) The Department must keep the medical and mental health records of any child or young adult in substitute care. As used in this section, "medical and mental health care records" includes a child or young adult's records of medical and mental health care, including but not limited to the names of former and current health providers, medical services and diagnoses, evaluations, immunizations, and prescribed medications.

(2) The caseworker must support timely exchange of medical and mental health care information for a child or young adult in substitute care unless:

(a) A child or young adult has the authority to consent to his or her own health and mental health care; or

(b) The child or young adult's parent or legal guardian retains authority to consent to health care decisions through a Voluntary Custody Agreement or Voluntary Placement Agreement.

(3) The caseworker must:

(a) Provide records of previous mental health assessments and assessment updates, including multiaxial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services to the licensed medical professional prior to the medical appointment or no later than the time at which the licensed medical professional examines the child or young adult when a child or young adult may be receiving a prescription for a psychotropic medication.

(b) Document and timely inform the substitute caregiver of the child or young adult's known health information, including information regarding any prescribed and administered psychotropic medication:

(A) At the time of placement; and

(B) When new or updated health information becomes known to the Department.

(4) To keep accurate medical records and documentation for a child or young adult's medical and mental health history record, the caseworker must:

(a) Retain copies of all medical and mental health records received by the Department in the medical section of the case file of the child or young adult in substitute care.

(b) Document and update records of known health conditions, services, and supports of the child or young adult in substitute care when developing the case plan and at each case plan review.

(c) Receive and review monthly the medication log of the child or young adult in substitute care and retain a copy in the medical section of the case file of the child or young adult and the Department's electronic information system.

(d) Document the medical information of the child or young adult in the Department's electronic information system.

(5) The Department must inform the substitute caregiver of the child or young adult that written authorization, as set forth in the following subsections, is required prior to filling a prescription for a new psychotropic medication unless there is an urgent medical need, in which case prior written authorization is not required.

(a) Unless an exception in subsection (d) of this section applies, the Child Welfare Program Manager or designee must provide written authorization prior to the administration of any new prescription of psychotropic medication to a child or young adult in substitute care when the requirements of at least one of the following paragraphs applies:

(A) The Department is the legal guardian of the child or young adult;

(B) Parental rights have been terminated and the court has ordered permanent commitment of the child or young adult and placed the child or young adult in the legal custody and guardianship of the Department; or

(C) A child or young adult's parents have signed a Release or Surrender Agreement giving the Department guardianship and control over the child or young adult.

(b) When the authority to provide authorization for psychotropic medication is not given to the Department in the Voluntary Placement Agreement or Voluntary Custody Agreement, the Department must obtain the written consent of a child or young adult's parent or legal guardian for the administration of psychotropic medication.

(c) A child, 15 years of age or older or a young adult may provide written consent for psychotropic medication under ORS 109.640.

(d) Written authorization of the Child Welfare Program Manager or designee is not required prior to the administration of any new prescription of psychotropic medication to a child or young adult in substitute care when the requirements of at least one of the following paragraphs applies:

(A) A change in the delivery system of a previously prescribed medication;

(B) A change in the dosage of a previously prescribed medication;

(C) A change in medication within the same drug classification;

(D) A one-time medication given prior to a medical procedure; or

(E) An anti-epileptic medication prescribed for a seizure disorder.

(6) After the caseworker has obtained the written authorization for psychotropic medication required under section (5) of this rule, the caseworker must do all of the following:

(a) Complete the notifications required under OAR 413-070-0480 and 413-070-0490.

(b) Ensure a report has been made to the prescribing licensed medical professional when the condition of the child or young adult in substitute care is not improving, is deteriorating, or when the child or young adult, caseworker, substitute caregiver, or other individual has observed suspected side effects of the medication.

(c) Request and receive updated health information about the child or young adult in substitute care and the effects of the prescribed psychotropic medication therapy from the substitute caregiver during the monthly contact with the substitute caregiver required under Child Welfare Policy I-B.1, "Monthly Contact and Monitoring Child and Young Adult Safety," OAR 413-080-0054.

(7) Prior to authorization and administration of a new prescription for more than one psychotropic medication or any antipsychotic medication, the Department must ensure a child or young adult in substitute care has received an assessment from a qualified mental health professional or licensed medical professional unless:

(a) A medication was prescribed for an urgent medical need; or

(b) The prescription is described in paragraphs (5)(d)(A) to (E) of this rule.

(8) The assessment required under section (7) of this rule either must:

(a) Have been completed within the three months prior to the prescription for psychotropic medication; or

(b) Be an update of a prior assessment, which focuses on a new or acute problem, and information from the assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(9) The Department must ensure the requirements of both of the following subsections are met:

(a) An annual review of psychotropic medications, by an individual other than the prescriber when:

(A) A child or young adult has more than two prescriptions for psychotropic medications; or

(B) A child under six years of age has a prescription for psychotropic medication.

(b) The annual review required under subsection (a) of this section must be conducted by one of the following:

(A) A licensed medical professional;

(B) A qualified mental health professional with the authority to prescribe drugs; or

(C) A licensed pharmacist with the Drug Use Review Program under the Oregon Health Authority, Division of Medical Assistance Programs OAR 410-121-0100.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

413-070-0450

Disclosure Requirements for the Department Regarding a Child 14 Years of Age and Older and a Young Adult in Substitute Care

Pursuant to ORS 109.675, a child 14 years of age or older or young adult in substitute care may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency, excluding methadone maintenance, by a licensed physician, licensed physician assistant, licensed psychologist, registered nurse practitioner, licensed clinical social worker, licensed professional counselor or marriage and family therapist, or a community mental health program established and operated pursuant to ORS 430.620. However, when a child 14 years of age or older or young adult is in substitute care, and the substitute caregiver or the Department has knowledge of any prescription, the notification requirements of OAR 413-070-0470, 413-070-0480, and 413-070-0490 apply.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

413-070-0470

Substitute Caregiver Responsibilities

(1) The substitute caregiver must:

(a) Notify the Department within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for a child or young adult; and

(b) Obtain authorization from the Department prior to filling a prescription for and administering a new psychotropic medication.

(2) The substitute caregiver must provide written or verbal notification to the caseworker or caseworker's supervisor within one business day when a licensed medical professional prescribes a change in dosage, suspension, or discontinuation of the current psychotropic medication.

(3) The substitute caregiver must keep current medical and mental health care records and medication logs of a child or young adult in the care or custody of the Department. The records must include all of the following:

(a) Medical and mental health appointments for the child or young adult in substitute care.

(b) Medical and mental health appointment follow-up reports provided to the substitute caregiver.

(c) Any record of any immunization obtained while in the care of the substitute caregiver.

(d) A record of all prescribed medications administered to the child or young adult in substitute care.

(4) A substitute caregiver certified by the Department must keep a current medication log on a form approved by the Department. A provider must keep a current medication log either on the form approved by the Department or on a form provided by the private child-caring agency. The medication log record must include all medications administered to the child or young adult in substitute care and must include all of the following:

(a) The name of the child or young adult in substitute care.

(b) The brand or generic name of the medication, including the prescribed dosage and prescribed dosage administration schedule.

(c) Times and dates of administration or monitored self-administration of the medication.

(d) The name or initials of the substitute caregiver administering the medication or monitoring the self-administration.

(5) The substitute caregiver must provide completed medication logs and any medication records obtained during medical visits and records of appointments to the Department at the end of each month. This must include logs of all medication administered to the child or young adult at school or in settings other than the home of the substitute caregiver.

(6) The substitute caregiver must keep all psychotropic medications properly stored and must:

(a) Ensure the psychotropic medication specifies the dosage and prescribed dosage administration schedule of the licensed medical professional for the psychotropic medication; and

(b) Ensure the psychotropic medication is stored in a safe manner and as prescribed. Psychotropic medication requiring refrigeration must be safely stored under refrigeration.

(7) The substitute caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for a child or young adult in substitute care without direction from the licensed medical professional.

(8) The substitute caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbal supplements, nutritional supplements, or homeopathic remedies, without direction and supervision of a licensed medical professional, and must notify the Department when any such alternative medication is directed.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

413-070-0480

Notification Timelines for Psychotropic Medication Therapy

(1) The Department must provide written notification to the parties identified in section (2) of this rule within a timely manner, not to exceed ten business days after:

(a) The Department receives notice that a psychotropic medication has been prescribed for a child or young adult in substitute care; or

(b) Either of the following changes occur in the treatment of a child or young adult in substitute care:

(A) The prescribed dosage of a psychotropic medication; or

(B) Discontinuation of existing psychotropic medication therapy.

(2) When a child or young adult is in substitute care, written notification is provided to:

(a) The parent or legal guardian, unless a parent has relinquished parental rights or had parental rights terminated;

(b) The attorney of the parent or legal guardian;

(c) The attorney of the child or young adult;

(d) The court appointed special advocate of the child or young adult, if one has been appointed;

(e) Any other legal parties to the case; and

(f) The substitute caregiver.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

413-070-0490

Notification Content for Psychotropic Medication Therapy

The notification described in OAR 413-070-0480 must contain all of the following:

(1) The name and contact information of the prescribing licensed medical professional.

(2) The diagnosed condition of the child or young adult for which the medication was prescribed.

(3) The name of the prescribed psychotropic medication.

(4) The prescribed dosage.

(5) The dosage recommended pursuant to a medically accepted indication.

(6) The reason the medication was prescribed.

(7) The expected benefit of the medication.

(8) The side effects of the medication.

(9) Notice of the right to petition the juvenile court for a hearing if there is an objection to the use of the prescribed medication or prescribed dosage.

Stat. Auth.: ORS 418.005 & 418.517

Stats. Implemented: ORS 109.640, 109.675, 418.005 & 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10; CWP 3-2015, f. & cert. ef. 1-1-15

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Department of Human Services, Self-Sufficiency Programs Chapter 461

Rule Caption: Clarify that individuals participating in a JOBS Plus activity use the Change Reporting System

Adm. Order No.: SSP 1-2015(Temp)

Filed with Sec. of State: 1-1-2015

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 461-170-0101

Subject: OAR 461-170-0101 about the Simplified Reporting System (SRS) is being amended to add a provision that an individual participating in a JOBS (Jobs Opportunity Basic Skills) Plus activity for the JOBS Program will remain in the Change Reporting System (CRS).

Rules Coordinator: Kris Skaro—(503) 945-6067

461-170-0101

Simplified Reporting System (SRS); ERDC, SNAP

In the ERDC and SNAP programs:

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the Simplified Reporting System (SRS).

(2) A filing group (see OAR 461-110-0370) certified to receive SNAP program benefits for less than six months may not participate in SRS.

(3) A filing group (see OAR 461-110-0350 and 461-110-0370) with a member working under a JOBS Plus agreement may not participate in SRS.

Stat. Auth.: ORS 411.060, 411.070, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816 & 412.049

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 1-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15

Rule Caption: Excludes foster care payments and guardianship assistance benefits as income in ERDC program

Adm. Order No.: SSP 2-2015(Temp)

Filed with Sec. of State: 1-1-2015

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 461-145-0200

Subject: OAR 461-145-0200 about foster care payments and Guardianship Assistance program benefits is being amended to state that the Employment Related Day Care (ERDC) program will no longer count foster care payments or guardianship assistance program benefits as income when a child is receiving such payments.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-145-0200

Foster Care Payments and Guardianship Assistance Benefits

Payments for foster care and benefits from the Guardianship Assistance program are treated as follows:

(1) In all programs except the ERDC and SNAP programs:

(a) If the provider of foster care or the guardian is in the financial group (see OAR 461-110-0530), the payments or benefits are treated as earned income except that it is excluded in the following situations:

(A) The amount the placement agency identifies as being for room and board, clothing, or personal incidental needs (including recreational expenses) of the foster care client is excluded.

(B) The amount designated for special need items of the foster care client is excluded.

(b) If the provider of foster care or the guardian is not in the financial group, the payments or benefits are excluded.

(2) In the ERDC program, the payments or benefits are excluded.

(3) In the SNAP program:

(a) The payments or benefits are counted as unearned income only if the person in foster care or under guardianship is in the filing group (see OAR 461-110-0370). The payments or benefits are excluded if the person in foster care or under guardianship is in the household group (see 461-110-0210) but not in the filing group.

(b) The payments or benefits are counted as self-employment income if the provider of foster care and the person receiving the care or the guardian and the person under guardianship are not in the same household.

Stat. Auth.: ORS 409.050, 411.060 & 411.816

Stats. Implemented: ORS 409.050, 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 2-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Allowing some TANF clients to voluntarily participate in the JOBS program

Adm. Order No.: SSP 3-2015(Temp)

Filed with Sec. of State: 1-1-2015

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 461-190-0211

Subject: OAR 461-190-0211 about case plan activities and standards for support service payments for the Department's Temporary Assistance for Needy Families (TANF) Job Opportunity and Basic Skills (JOBS) program is being amended to allow TANF individuals who are not required to participate in JOBS requirements due to having a child under the age of six months old to voluntarily participate in the JOBS program.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-190-0211

Case Plan Activities and Standards for Support Service Payments; JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, TANF

In the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs, notwithstanding any other administrative rule in Chapter 461 and subject to the limitations of state funding, the following special provisions apply:

(1) Participation in an activity (see OAR 461-001-0025) is limited as provided in each of the following subsections:

(a) An individual who is determined to be a work-eligible individual according to federal definition (45 CFR 261.2(n)(1)). Unless section (10), (11), or (12) of this rule applies, no other individual may participate in and

access JOBS contract activities and support services (see OAR 461-001-0025).

(b) An individual who is an applicant in the Pre-TANF program, a recipient of TANF or Post-TANF program benefits, or has become over-income due to earnings in an on-the-job training (see OAR 461-001-0025) activity pursuant to section (12) of this rule.

(2) For eligible individuals, subject to the requirements and limitations in sections (1), (5), (6), and (7) of this rule, the following activities will be available, and include support services payments if needed:

(a) Job search (see OAR 461-001-0025).

(b) JOBS Plus (see OAR 461-001-0025 and OAR 461-101-0010) is limited to six months per individual, unless circumstances unique to the employment situation are identified and warrant the Department to approve a limited number of additional months.

(c) Work experience (see OAR 461-001-0025).

(d) Sheltered or supported work (see OAR 461-001-0025).

(e) High School or GED Completion Attendance (see OAR 461-001-0025).

(f) Parents as Scholars (see OAR 461-001-0025).

(g) Limited family stability (see OAR 461-001-0000).

(A) Drug and alcohol services (see OAR 461-001-0025).

(B) Mental health services (see OAR 461-001-0025).

(C) Attending medical appointments or services.

(D) Rehabilitative activities (see OAR 461-001-0025).

(E) Crisis Intervention (see OAR 461-001-0025).

(F) SSI application process.

(h) Vocational training (see OAR 461-001-0025).

(i) Life Skills (see OAR 461-001-0025).

(j) On-the-job training (see OAR 461-001-0025).

(k) Unsubsidized employment (work).

(l) Adult Basic Education (see OAR 461-001-0025).

(3) The following activities will not include support services payments:

(a) Domestic Violence Intervention.

(b) Family Support & Connections.

(c) Microenterprise (see OAR 461-001-0025).

(d) Post-TANF.

(e) Program entry (see OAR 461-001-0025).

(f) Self Initiated Training (see OAR 461-001-0025).

(4) Participation in an activity is based on whether an individual is Job Ready, Near Job Ready, Not Job Ready, or a teen parent (see OAR 461-001-0000 and 461-001-0025).

(a) Job Ready means the individual has no barrier (see OAR 461-001-0025) or current barriers do not impact participation or employment. In addition, the individual has all of the following:

(A) Prior stable work history, either paid or unpaid.

(B) Had not voluntarily quit or been dismissed from their most recent employment (see OAR 461-135-0070), without good cause (see OAR 461-135-0070).

(C) Reliable or available transportation.

(D) No outstanding legal issues that would impact or prevent employment.

(E) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.

(b) Near Job Ready means the individual has minimal barriers to participation or employment and the individual is addressing the barriers. In addition, the individual has all of the following:

(A) Limited or no work history, either paid or unpaid.

(B) Reliable or available transportation.

(C) No outstanding legal issues that would impact or prevent employment, or such legal issues are identified and are being addressed.

(D) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.

(c) Not Job Ready means the individual has one or more barriers to participation or employment or is in crisis, and the individual is not addressing the barriers. For example, the individual has one or more of the following:

(A) Lack of stable housing that is preventing participation in an activity or employment.

(B) Domestic violence, mental health or alcohol and drug issues, and the individual is not addressing the issue.

(C) Medical issues that prevent participation in an activity or employment.

(D) Outstanding legal issues that would impact or prevent employment.

(E) Literacy issues that impact the ability for the individual to participate in an activity or obtain employment.

(5) In approving JOBS program support services payments, the Department must consider lower cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(6) Payments for support services are only provided when:

(a) Necessary to participate in activities in a signed case plan;

(b) Authorized in advance; and

(c) All other provisions of this rule are met.

(7) Payments for support services are subject to the following limitations:

(a) Child Care. Payments for child care may be authorized, as limited by OAR 461-160-0040, if necessary to enable Job Ready or Near Job Ready individuals or teen parents to participate in an approved JOBS program activity specified in the individual's case plan, or a Not Job Ready individual approved by the district to complete a family stability activity. If authorized, payment for child care will be:

(A) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150.

(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

(b) Transportation. The Department may provide payments for a Job Ready or Near Job Ready individual or teen parent for transportation costs incurred in travel to and from an approved JOBS program activity or a Not Job Ready individual approved by the district to complete a family stability activity. Payment is made only for the cost of public transportation or the cost of fuel. Payments are subject to the following considerations:

(A) Payment for public transportation is a priority over payment for a privately owned vehicle.

(B) Payment for fuel costs for a privately-owned vehicle is only provided if the client or individual providing the transportation has a valid driver's license and vehicle insurance and either of the following is true:

(i) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(ii) Public transportation is available but is more costly than the cost of fuel.

(c) Housing and Utilities. Payments for housing and utilities are not allowed.

(d) Other Payments. When the need is identified by the district and no other sources are available, the Department may provide other payments needed:

(A) To look for work.

(B) To accept a job offer.

(C) To attain a high school diploma or GED.

(D) For books and supplies for a participant to complete a district-approved vocational training.

(E) Other payments with manager approval that are not otherwise restricted by rule.

(e) None of the following payments are allowed:

(A) Non-essential items.

(B) Television, cable, and internet.

(C) Fines, reinstatement fees, restitution, legal fees, civil fees, court costs, or other costs associated with a penalty.

(D) Purchase of a car, recreational vehicle, or motor home.

(E) Support services for exempt individuals.

(F) Pet-related costs.

(G) ERDC co-payments.

(8) The Department may require an individual to provide verification of a need for, or costs associated with, support services prior to approval and issuance of payment if verification is reasonably available.

(9) The Department may reduce, close, or deny in whole or in part an individual's request for a support services payment in the following circumstances:

(a) The individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the individual to demonstrate cooperation with his or her case plan.

(b) The purpose for the payment is not related to the individual's case plan.

(c) The individual disagrees with a support services payment offered or made by the Department as outlined in the individual's case plan.

(d) The individual is not determined to be a Job Ready or Near Job Ready individual, a Not Job Ready individual in a family stability activity, or a teen parent.

(10) Subject to the availability of services and local budget, an individual who is not a teen parent and who is otherwise exempt from JOBS requirements as a one-parent household with a dependent child (see OAR 461-001-0000) under six months of age may be a volunteer (see 461-130-0305) and participate, and may be eligible for support services payments.

(11) An individual who has gone over-income for the TANF program due to earnings and needs to increase activity hours to meet Post-TANF federally required participation rates (see OAR 461-001-0025) may be a volunteer and participate.

(12) An individual who has become over-income for the TANF program due to earnings in an on-the-job training activity is eligible to receive support services for no more than three months, unless circumstances unique to the situation are identified and warrant the Department to approve a limited number of additional months. Eligibility for support services under this section is only permitted while the individual continues to participate in the on-the-job training activity.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.121, 412.006, 412.009, 412.014, 412.049, 412.124 & 2013 Or. Laws 722

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.121, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124 & 2013 Or. Laws 722

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2011(Temp), f. & cert. ef. 11-1-11 thru 4-29-12; SSP 11-2012, f. & cert. ef. 4-6-12; SSP 12-2012(Temp), f. & cert. ef. 4-6-12 thru 9-30-12; SSP 18-2012(Temp), f. & cert. ef. 5-23-12 thru 9-30-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 34-2012(Temp), f. & cert. ef. 11-6-12 thru 5-5-13; SSP 38-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 5-5-13; SSP 2-2013(Temp), f. & cert. ef. 1-23-13 thru 5-5-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 6-2014(Temp), f.& cert. ef. 3-5-14 thru 9-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 3-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Amending rules relating to public assistance programs, including SNAP, TANF, and OSIPM
Adm. Order No.: SSP 4-2015
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Rules Amended: 461-115-0071, 461-135-0780, 461-145-0220, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0015, 461-160-0580, 461-160-0620
Rules Repealed: 461-115-0071(T), 461-125-0190, 461-160-0015(T)
Subject: OAR 461-115-0071 about who must sign the application and complete the application process is being amended to make permanent temporary changes adopted July 16, 2014 to allow an employee of a public institution to witness the mark of an inmate who is applying for OSIPM Medicaid services, when that inmate is unable to sign the application.

OAR 461-125-0190 about the unemployment or underemployment of the principal wage earner (PWE) is being repealed because the concept of the PWE is no longer used when determining TANF eligibility.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, 461-145-0220 about treatment of the home, 461-155-0250 about income and payment standard for OSIPM, 461-155-0270 about room and board standards for OSIPM, 461-155-0300 about shelter-in-kind standard for OSIP, OSIPM and QMB, 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), and 461-160-0620 about income deductions and client liability for Long Term Care Services and Waivered Services are being amended to reflect the annual federal cost of living adjustments.

461-160-0015 about resource limits is being amended to reflect the annual federal cost of living adjustments and to make permanent a temporary change adopted October 1, 2014 that increased the resource limit for some SNAP households from $2,000 to $2,250.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-115-0071
Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, REF, REFM, and TANF programs, the following individuals must sign the application and complete the application process:

(a) In the ERDC program, a caretaker (see OAR 461-001-0000).

(b) In the REF, REFM, and TANF programs, at least one caretaker relative (see OAR 461-001-0000).

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a child (see OAR 461-001-0000). If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse (see OAR 461-001-0000), both must sign the application.

(c) A dependent child 18 years of age who applies must sign the application and complete the application process.

(3) In the GA, GAM, OSIPM, and QMB programs, at least one adult requesting assistance must complete the application process and sign the application, if able. If there is no adult who is able to sign the application and complete the application process, this may be done by the authorized representative (see OAR 461-115-0090). If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(4) In the SNAP program, the primary person (see OAR 461-001-0015), the spouse of the primary person, or another adult member of the filing group (see 461-110-0370) must sign the application and complete the application process.

(5) An individual required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the:

(a) Branch office (see OAR 461-001-0000); or

(b) Public institution (see OAR 461-135-0950), when the individual applying is an inmate (see 461-135-0950) and is applying for benefits under the OSIPM program.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.816 & 412.049

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 23-2010(Temp), f. & cert. ef. 7-15-10 thru 1-11-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 19-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; SSP 4-2015, f. & cert. ef. 1-1-15

461-135-0780
Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if the individual meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB.

(2) The SSB amount received by the individual when the individual became ineligible for SSI or OSIP is used as the individual's countable (see OAR 461-001-0000) Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with sections (3) and (5) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (5) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment.

(4) Add the amount determined in accordance with section (2) or (3) of this rule to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the $20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment.

(a) For spouses in the same financial group (see OAR 461-110-0530), determine the spouse's SSB amount in the year the individual stopped receiving SSI or perform the above calculation for the spouse's Social Security benefit using the same multiplier, regardless of whether or not the spouse (see 461-001-0000) received SSI, combine the results and add the subtotal to all other countable unearned and adjusted earned income.

(b) If the total is less than the full SSI standard for a couple plus the $20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(5) The following guide contains the calculations used to determine the SSB for prior years (use this table only if you cannot determine the prior year's amount using information provided by SSA): [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.083 & 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404 & 411.704

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

461-145-0220
Home

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The "child" of the individual occupies the home.

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.

(iii) The equity in the home is $552,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The individual occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than $552,000 and the individual is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the individual is absent to receive care in a medical institution, if one of the following is true:

(A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition. A written statement from a competent individual is sufficient to prove the intent.

(B) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07;SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

461-155-0250
Income and Payment Standard; OSIPM

(1) An individual who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) An individual in a nonstandard living arrangement (see OAR 461-001-0000) meeting the requirements of 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable (see 461-001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(4) An individual, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM (except OSIPM-EPD) program, an individual in a nursing facility or an ICF-MR is allowed the following amounts for clothing and personal incidentals:

(a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), $90 is allowed.

(b) For all other individuals, $60 is allowed.

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than $60, the payment standard is equal to the difference between the individual's countable income (including any SSI) and $60. For the purposes of this subsection, countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

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

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704 & 411.706
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f.& cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 17-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

461-155-0270
Room and Board Standard; OSIPM

For an OSIPM program client in a community based care (see OAR 461-001-0000) facility, the room and board standard is $570.00. A client residing in a community based care facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 411.704 & 411.706
Stats. Implemented: ORS 411.060, 411.070, 411.704 & 411.706
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 1-2013(Temp), f. & cert. ef. 1-8-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 4-2015, f. & cert. ef. 1-1-15

461-155-0300
Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single individual:

(a) Living alone, $450 for total shelter or $270 for housing costs only.

(b) Living with others, $208 for total shelter or $125 for housing costs only.

(2) For a couple:

(a) Living alone, $557 for total shelter or $334 for housing costs only.

(b) Living with others, $206 for total shelter or $124 for housing costs only.

Stat. Auth.: ORS 411.060 & 411.070
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

461-160-0015
Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC and REFM programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) $2,000 for a one-person need group (see OAR 461-110-0630) and $3,000 for a two-person need group.

(b) $1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed $500 for a one-person need group or $1,000 for a two-person need group.

(c) $5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the REF and TANF programs, the resource limit is:

(a) $2,500 for any of the following:

(A) A new REF or TANF applicant for benefits.

(B) REF and TANF need groups which do not have at least one caretaker relative (see OAR 461-001-0000) or parent (see OAR 461-001-0000) who is receiving TANF.

(C) REF and TANF need groups which have at least one JOBS participant who is:

(i) Receiving TANF and not progressing in an activity (see OAR 461-001-0025) of an open JOBS case plan (see 461-001-0025); or

(ii) Serving a current JOBS disqualification (see OAR 461-130-0330).

(b) $10,000 for a need group not covered under subsection (a) of this section.

(5) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2015 the resource limit is $7,280 for a one-person need group and $10,930 for a need group containing two or more individuals.

(6) In the SNAP program, the resource limit is:

(a) $3,250 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see 461-001-0015) or an individual with a disability (see 461-001-0015).

(b) $2,250 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 411.837, 412.049, 414.025, 414.231, 414.826, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 26-2014(Temp), f. & cert. ef. 10-1-14 thru 3-30-15; SSP 4-2015, f. & cert. ef. 1-1-15

461-160-0580
Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because the individual is in or will be in a continuous period of care (see 461-001-0030).

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for the OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable (see OAR 461-001-0000) resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than $119,220.

(B) $23,844 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term "court-ordered community spouse resource allowance" means a "court-ordered community spouse resource allowance" that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse (see OAR 461-001-0030) and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015(3)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than $119,220) plus the OSIPM resource standard for one person.

(B) $23,844 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.

(C) A "court-ordered community spouse resource allowance" plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the "court-ordered community spouse resource allowance".)

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse (see OAR 461-001-0000) of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of $65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is $85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A $60 personal needs allowance for an individual receiving long-term care services.

(B) A $90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The $90 allowance is allowed only when the VA benefit has been reduced to $90.

(C) For an individual who receives home and community-based care:

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus $500.

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. $1,967 is added to the amount over $590 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or $2,980.50 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000)

income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below $1,967. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from $1,967.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the individual and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the individual's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The individual's liability is determined as follows:

(A) For an individual receiving home and community-based care (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For an individual who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or home and community-based care is as follows:

(a) One standard earned income deduction of $65 is made from the earned income for an individual who is not blind; or

(b) One standard earned income deduction of $85 is made from the earned income for an individual who is blind.

Stat. Auth.: ORS 411.060, 411.070 & 411.706

Stats. Implemented: ORS 411.060, 411.070 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991. f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thu 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 16-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 25-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 3-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 17-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 4-2015, f. & cert. ef. 1-1-15

Department of Human Services, Vocational Rehabilitation Services Chapter 582

Rule Caption: Establish 90 days to vocational plan; aligns Vocational Rehabilitation definitions with WIOA amended Rehabilitation Act.
Adm. Order No.: VRS 1-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 582-001-0010, 582-050-0000
Rules Repealed: 582-001-0003, 582-001-0005
Subject: Vocational Rehabilitation proposes these amendments to comply with requirements of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), enacted July 22, 2014. See WIOA Bill Public Law No. 113-128.

OAR 582-050-0003 Purpose for Adoption of Procedural Rules and OAR 582-001-0005 General Procedures are no longer necessary.

OAR 582-050-0010 Definitions for Chapter 582 is amended to comply with new and revised definitions in WIOA Bill Public Law No. 113-128.

OAR 582-050-0000 is amended to comply with the required 90 days to plan in WIOA Bill Public Law No. 113-128.
Rules Coordinator: Robin Brandt—(503) 945-5857

582-001-0010
Definitions for Chapter 582

The following definitions apply to each division in chapter 582 of the Oregon Administrative Rules unless otherwise indicated:

(1) "Act" means Public Law No: 113-128, Title IV — Amendments to the Rehabilitation Act of 1973.

(2) "Administrator" means the Administrator of Vocational Rehabilitation.

(3) "Applicant" means an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR 361.41(b)(2).

(4) "Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case:

(a) A review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection if in effect; and

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and priority assignment;

(c) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment:

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements: Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection for the individual; and Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include an assessment of the individual's personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the individual's employment and rehabilitation needs; and

(D) May include an appraisal of the individual's patterns of work behavior and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the individual's capacities to perform adequately in a work environment;

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings. (Public Law No: 113-128, Title IV--Amendments to the Rehabilitation Act of 1973 Sec. 404, Definitions)

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(e) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(5) "Assistive technology" means technology designed to be utilized in an assistive technology device or assistive technology service.

(6) "Assistive technology device" refers to any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(7) "Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(8) "CFR" means the Code of Federal Regulations.

(9) "Client Assistance Program" or "CAP" means a federally-funded program authorized under 34 CFR 370 that is independent of the Program and whose purpose is to provide information, advocacy, and legal representation to individuals seeking Program services.

(10) "Community Rehabilitation Program" or "CRP" means:

(a) A program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs, including technicians for assessment tests.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Customized employment as defined in section (13).

(P) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Q) Personal assistance services.

(R) Services similar to the services described in subsections (A) through (R) of this definition, including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(b) For the purposes of this definition, the agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions. It does not include the prospective employer of the individual.

(11) "Comparable services and benefits" means:

(a) Services and benefits that are:

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, health insurance, or employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with 34 CFR 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the Program.

(b) Comparable services and benefits does not include awards and scholarships based on merit.

(12) Competitive Integrated Employment means work that is performed on a full-time or part-time basis and includes self-employment:

(a) For which an individual is compensated at a rate that:

(A) Shall be not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate specified in the applicable State or local minimum wage law; and

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees;

(b) That is at a location where the employee interacts with others who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, if applicable, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions. (Public Law No: 113-128, Title IV--Amendments to the Rehabilitation Act of 1973, Sec. 404, Definitions)

(13) Customized Employment means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, including but not limited to:

(a) Job exploration by the individual;

(b) Working with an employer to facilitate placement, including:

(A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(B) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision, performance evaluation and review, and determining a job location;

(C) Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(D) Providing services and supports at the job location.

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

(15) "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR 361.42(a).

(16) "Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time integrated competitive employment, as defined in OAR 582-001-0010(12), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including customized employment, self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(17) "Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(18) "Extended services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are:

(a) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;

(b) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and,

(c) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than Vocational Rehabilitation funds after an individual with a most significant disability has made the transition from support provided by the Program.

(19) "Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(20) "Family member," for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(i), means an individual who:

(a) Is a relative or guardian or lives in the same household of an applicant or eligible individual; and

(b) Has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(21) "Impartial hearing officer" means an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education). An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer;

(b) Is not a member of the State Rehabilitation Council for the Program;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(22) "Individual with a disability" means an individual:

(a) Who has a physical or mental impairment; and

(b) Whose impairment constitutes or results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome from the receipt of vocational rehabilitation services.

(23) "Individual with a most significant disability" means an eligible individual who:

(a) Has a severe mental or physical impairment that seriously limits two or more functional capacities in mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and

(b) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(24) "Individual with a significant disability" means an eligible individual who does not qualify as an individual with a most significant disability as defined in section (23); and

(a) The individual is currently receiving or eligible to receive Social Security Income or Social Security Disability Insurance payments; or

(b) The individual:

(A) Has a severe mental or physical impairment that seriously limits one functional capacity in mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(25) "The Individualized Plan for Employment" (IPE) is a blueprint or action plan for attaining the individual's vocational objective. The IPE identifies services necessary to assist the individual to prepare for, secure, retain, or regain an employment outcome consistent with his or her strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. The IPE identifies the employment objective, approved service providers, all program costs, time frames, and the individual's responsibilities under the plan.

(26) "Informed Choice" means that individuals who are applicants for vocational rehabilitation services or eligible individuals receiving such services must be active and full partners throughout the vocational rehabilitation process. Program participants must have the opportunity to make meaningful decisions during assessment for eligibility and in the selection of the employment outcome, services needed to achieve the outcome, service providers, and method of securing services. The Program shall provide information and support services sufficient to inform each applicant and eligible individual about the availability of and opportunity to exercise informed choice

(27) "Integrated setting with respect to providing services" means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(28) "Integrated setting with respect to an employment outcome" means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(29) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(30) "Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist individuals in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the Program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified and impartial mediator as defined in 34 CFR 361.5(b)(43).

(31) "Ongoing support services," as used in the definition of ''Supported employment''

(a) Means services that are:

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by the Program of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by the Program from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(b) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(c) Consist of:

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, individuals, parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in 34 CFR 361.48; or

(I) Any service similar to the foregoing services.

(32) "Program" means Vocational Rehabilitation.

(33) "Parent or Guardian" means a person having legal responsibility for the overall welfare and well-being of an individual under age 18 or an individual who, if over age 18, is considered legally incompetent.

(34) "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

(35) "Qualified Personnel" means an individual licensed or certified by the state or an individual who maintains an equivalent licensure or certification from another state to make the diagnosis of an applicant's impairment.

(36) "Pre-Employment Transition Services" means services provided in accordance with Public Law No: 113-128, Title IV--Amendments to the Rehabilitation Act of 197, Section 113.

(a) "Required Activities" provided with funds reserved under Section 110 29 U.S.C. 730, and any funds made available from State, local, or private funding sources shall be used to make available to students with disabilities for

(A) Job exploration counseling;

(B) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment to the maximum extent possible;

(C) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(D) Workplace readiness training to develop social skills and independent living; and

(E) Instruction in self-advocacy, which may include peer mentoring.

(b) "Authorized Activities" provided with funds available under subsection (a) and remaining after the provision of the required activities described in subsection (a) may be used to improve the transition of students with disabilities described in subsection (a) from school to postsecondary education or an employment outcome by:

(A) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(B) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in postsecondary education experiences, and obtain and retain competitive integrated employment;

(C) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(D) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(E) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(F) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(G) Developing model transition demonstration projects;

(H) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(I) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved populations.

(c) "Pre-Employment Transition Coordination" means each local office of the Program shall carry out responsibilities consisting of:

(A) Attending individualized education program meetings for students with disabilities, when invited;

(B) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(C) Working with schools, including those carrying out activities under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)), to coordinate and ensure the provision of pre-employment transition services; and

(D) When invited, attend person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(37) "Physical and mental restoration services" means:

(a) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(b) Diagnosis and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(c) Dentistry;

(d) Nursing services;

(e) Necessary inpatient or outpatient care hospitalization in connection with surgery or treatment and clinic services;

(f) Drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws (ORS 683);

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(o) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(p) Other medical or medically related rehabilitation services.

(38) "Physical or mental impairment" means:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(39) "Post-employment services" means the services identified in 34 CFR 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(40) "Provider of community rehabilitation services" means any community rehabilitation program, business, or independent contractor that is paid by the Program to provide any service listed in OAR 582-001-0010(11).

(41) "Qualified and impartial mediator" means an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education). An individual serving as a mediator is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by a public agency to serve as a mediator;

(b) Is not a member of the State Rehabilitation Council for the Program;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(e) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual requesting mediation during the mediation proceedings.

(42) "Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and

distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(43) "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(44) "Representative" means any person identified by the individual as being authorized to speak or act on behalf of the individual or to assist the individual any matter pertaining to services of the Program, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(45) "State plan" means the State plan for vocational rehabilitation services submitted by the Program under 34 CFR 361.10.

(46) "Substantial impediment to employment" means a physical or mental impairment that (in light of medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities and capabilities.

(47) "Supported employment" means: competitive integrated employment, customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most significant disabilities and:

(a) For whom competitive integrated employment has not historically occurred; or

(b) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(c) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition described in section (49), in order to perform the work involved.

(48) "Supported employment services" means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in supported employment, that are:

(a) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;

(b) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(c) Provided by the designated State unit for a period of not more than 24 months, except that period may be extended, if necessary, in order to achieve the employment outcome identified in the IPE.

(49) "Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(50) "Vocational rehabilitation services":

(a) If provided to an individual, means those services listed in 34 CFR 361.48; and

(b) If provided for the benefit of groups of individuals, also means those services listed in 34 CFR 361.49.

(51) "Vocational rehabilitation training" means skill training in which the basis and focus of the training are individualized or customized. Vocational rehabilitation training may include focus on disability related issues as those issues impact the skills training. Vocational rehabilitation training may include, but is not limited to:

(a) Supported employment;

(b) Disability and related skills training;

(c) On the job training;

(d) One-on-one specialized business training provided to individuals who are working to establish their own business;

(e) Customized training offered by an employer to a group of individuals for the purpose of training and possibly hiring the individuals.

(52) "Vocational training" means skills training for a specific occupation.

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530, 344.550, 344.560, 344.570 & 344.590

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 3-2008, f. & cert. ef. 4-10-08; VRS 4-2008(Temp), f. 12-18-08, cert. ef. 12-19-08 thru 6-16-09; VRS 2-2009, f. & cert. ef. 3-27-09; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 1-2014, f. 12-30-14, cert. ef. 1-1-15

582-050-0000
Referrals and Applications

(1) Referrals to and applications for vocational rehabilitation services provided by the Program shall be handled promptly and equitably.

(2) The Program shall establish timelines for making a good faith effort to inform individuals referred to or seeking services from the Program of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(3) Assessment to determine eligibility and priority for services shall commence as soon as an application for services is received and to the maximum extent possible shall be expedited through use of existing information, including school, Social Security, medical and family member records.

(4) An individual is considered to have submitted an application only when all the following conditions have been satisfied:

(a) The individual or the individual's representative, as appropriate, has completed and signed a Program application form or has otherwise requested services;

(b) The individual or the individual's representative, as appropriate, has provided the information necessary to initiate an assessment for eligibility; and

(c) The individual is available to complete the assessment process.

(5) Once the Program has received an application for vocational rehabilitation services, including applications for vocational rehabilitation services made through common intake procedures in One-Stop centers established under section 121 of the federal Workforce Investment Act of 1998, the Program must make an eligibility determination within 60 days, unless:

(a) Exceptional and unforeseen circumstances beyond the control of the Program preclude making an eligibility determination within 60 days and the Program and the individual agree to a specific extension of time; or

(b) A trial work experience or exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with 34 CFR 361.42(e) or, if appropriate, an extended evaluation is carried out in accordance with 34 CFR 361.42(f).

(6) The Program may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the Program has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.

(7) The length of time between eligibility determination and the signing of the Individualized Plan for Employment (IPE) by the Program counselor and the individual or the individual's representative may not exceed 90 days. If the Program invokes an Order of Selection, the length of time begins once the individual is removed from the waitlist. Exceptions to the 90 day time frame include:

(a) Mutual agreement by the individual and counselor to an extension to a specific date by which the IPE shall be completed, taking into consideration the unique needs of the individual;

(b) Individual involvement in the Program dispute resolution process addressing issues critical to plan development;

(8) The Program shall make information regarding application requirements and forms available statewide.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.570

Hist.: VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2006, f. & cert. ef. 8-1-06; VRS 3-2009, f. & cert. ef. 3-27-09; VRS 1-2011(Temp), f. 2-15-11, cert. ef. 3-1-11 thru 8-28-11; VRS 2-2011, f. 8-12-11, cert. ef. 9-1-11; VRS 1-2014, f. 12-30-14, cert. ef. 1-1-15

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Department of Justice
Chapter 137

Rule Caption: Relating to Good Cause.
Adm. Order No.: DOJ 1-2015
Filed with Sec. of State: 1-5-2015
Certified to be Effective: 1-5-15
Notice Publication Date: 11-1-2014
Rules Amended: 137-055-1090

Subject: OAR 137-055-1090 is amended to conform the rule to the Department of Human Service's policy regarding removal of good cause coding, upon request of the obligee and the program currently providing services, when the program that originally granted good cause is no longer providing services. This amendment also changes the process for removing arrears from a case when closing the case for good cause.

Rules Coordinator: Carol Riches—(503) 947-4700

137-055-1090

Good Cause

(1) For the purposes of OAR chapter 137, division 55, good cause means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. Specifically excluded from this definition are good cause for not withholding as defined in 25.396 and OAR 137-055-4060 and good cause found for not disbursing support to a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause case coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-135-1200 or 461-135-1205, if TANF or Title IV-E benefits are being provided;

(b) The Oregon Health Authority (OHA), pursuant to OAR 461-120-0350 and 410-200-0220, if Medicaid benefits are being provided;

(c) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement I-B-7.0, if the child is in OYA's custody;

(d) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(e) The administrator when the provisions of subsections (a) through (d) of this section do not apply.

(4) When the provisions of subsection (3)(e) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause form, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) File credit all arrears.

(5) In determining whether providing services is in the best interest of the child under section (3)(d), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS chapter 110 is received from another jurisdiction and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring jurisdiction of the finding and determination of good cause and request that the jurisdiction consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring agency and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligees address is unknown, and the referring jurisdiction advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYAs custody, and there has been a good cause determination, the administrator will notify the state agency currently providing services of the previous good cause determination. The administrator will not provide services unless the program currently providing services determines good cause no longer applies and requests the administrator remove the coding.

(13) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS, OHA or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services

on the case or related cases unless and until good cause coding is removed by DHS, OHA or OYA.

(14) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(15) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 1-2015, f. & cert. ef. 1-5-15

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Department of Public Safety Standards and Training
Chapter 259

Rule Caption: To update the pre-employment background investigation rules.
Adm. Order No.: DPSST 31-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 12-29-14
Notice Publication Date: 12-1-2014
Rules Adopted: 259-009-0015
Rules Amended: 259-008-0015
Subject: In April, 2014, the Board on Public Safety Standards and Training requested that a workgroup be assembled to review DPSST's current background investigation administrative rule. In July and August, 2014, a background investigation workgroup comprised of representatives from law enforcement and fire service, met to discuss the current standard. The workgroup reviewed the current rule language and developed additional background investigation requirements to update the guidelines. This rule change updates OAR 259-008-0015 and provides housekeeping. Further, OAR 259-009-0015 (Background Investigations) has been added for fire service professionals.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-008-0015
Background Investigation

(1) A background investigation must be conducted by a public or private safety agency on each individual being considered for employment as a public safety professional to determine if applicant is of good character.

(a) The background investigation must include, but is not limited to, investigation into the following:

(A) Criminal history and arrests;

(B) Department of Motor Vehicles (DMV) records;

(C) Drug and alcohol use;

(D) Education verification;

(E) Employment history;

(F) Military history verification;

(G) Personal and professional references. Personal and professional references may include, but are not limited to, friends, associates, family members, and neighbors;

(H) Personal Interview. The personal interview may occur before or after the investigation and may be used to clarify discrepancies in the investigation;

(I) Records checks, which may include, but are not limited to:

(i) Police records, district attorney, court and Oregon Judicial Information Network (OJIN) records;

(ii) Open sources or social media, as permitted by law;

(iii) Financial information, as permitted by law; and

(iv) Department of Public Safety Standards and Training Professional Standards records.

(J) Residential history; and

(K) Work eligibility.

(b) Each individual being considered for employment must provide a notarized personal history statement. The statement must include, but is not limited to:

(A) Verification of the background information referred to in section (1)(a);

(B) A complete list of all public safety agencies an individual has applied with; and

(C) A signed release allowing background investigation information to be shared with other potential employers.

(2) Results of the background investigation on all public safety professionals must be retained by the public or private safety agency in accordance with the Secretary of State's Record Retention Schedule and must be available for review at any reasonable time by the Department.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0021, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 31-2014, f. & cert. ef. 12-29-14

259-009-0015
Background Investigation

(1) A background investigation must be conducted by a fire service agency on each individual being considered for employment as a fire service professional to determine if applicant is of good character.

(a) The background investigation must include, but is not limited to, investigation into the following:

(A) Criminal history and arrests;

(B) Department of Motor Vehicles (DMV) records;

(C) Drug and alcohol use;

(D) Education verification;

(E) Employment history;

(F) Military history verification;

(G) Personal and professional references. Personal and professional references may include, but are not limited to, friends, associates, family members, and neighbors;

(H) Personal Interview. The personal interview may occur before or after the investigation and may be used to clarify discrepancies in the investigation;

(I) Records checks, which may include, but are not limited to:

(i) Police records, district attorney, court and Oregon Judicial Information Network (OJIN) records;

(ii) Open sources or social media, as permitted by law;

(iii) Financial information, as permitted by law; and

(iv) Department of Public Safety Standards and Training Professional Standards records.

(J) Residential history; and

(K) Work eligibility.

(b) Each individual being considered for employment must provide a notarized personal history statement. The statement must include, but is not limited to:

(A) Verification of the background information referred to in section (1)(a);

(B) A complete list of all fire service agencies an individual has applied with; and

(C) A signed release allowing background investigation information to be shared with other potential employers.

(2) Results of the background investigation on all fire service professionals must be retained by the fire service agency in accordance with the Secretary of State's Record Retention Schedule and must be available for review at any reasonable time by the Department.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: DPSST 31-2014, f. & cert. ef. 12-29-14

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Rule Caption: Amends academic proficiency standard to include all law enforcement officers; provides exception for certified individuals.
Adm. Order No.: DPSST 32-2014
Filed with Sec. of State: 12-29-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 259-008-0010, 259-008-0011
Subject: This permanent rule change amends the academic proficiency standard to include all law enforcement officers. It also removes "challenging basic police training" from section (7) (c) of rule, since challenging basic police training is no longer an option for students. Additionally, this rule change waives the academic pro-

ficiency standard for certified individuals applying for training in the same discipline.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state may employ any person under the age of 21 years as a police officer, corrections officer or parole and probation officer.

(3) Fingerprints. Within 90 days of the date of employment in a certifiable position, each police, corrections, or parole and probation officer must be fingerprinted on a standard applicant fingerprint card.

(a) The hiring agency is responsible for fingerprinting and must forward one card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.

(b) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department must comply with the most current requirements.

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

(4) Criminal Records. No police, corrections, or parole and probation officer may have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by an accredited, degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Academic Proficiency Standard. Before beginning basic training or beginning the career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic training.

(A) The hiring agency is responsible for ensuring a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

(C) Individuals who have successfully completed training resulting in the award of certification in the discipline they are applying for training are exempt from this testing requirement. Individuals must submit proof of training and certification.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 1210.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) Except as provided in (e) below, the Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination; and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position.

(f) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(g) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(h) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no aver-

age loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(i) If amplification device(s) is (are) necessary to meet the criteria in (g) or (h) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(j) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(k) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (k), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (k), it will be at the expense of the applicant or hiring authority.

(l) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(m) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(n) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(o) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(p) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for Denial of Waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: All contested case notice will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(c) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-0672.

(e) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(f) Proposed and Final Orders: In cases in which a hearing was requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

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

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 10-2009, f. & cert. ef. 9-21-09; DPSST 9-2011, f. & cert. ef. 6-28-11; DPSST 14-2011, f. 9-26-11, cert. ef. 10-1-11; DPSST 18-2012, f. & cert. ef. 8-27-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 13-2014, f. & cert. ef. 6-24-14; DPSST 32-2014, f. 12-29-14, cert. ef. 1-1-15

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) Fingerprints. Within 90 days of the date of employment in a certifiable position, each telecommunicator and emergency medical dispatcher must be fingerprinted on a standard applicant fingerprint card.

(a) If the hiring agency is a public agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.

(b) If the hiring agency is a private agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Department along with the appropriate fee.

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

(d) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher will have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Notification of Conviction:

(a) A telecommunicator or emergency medical dispatcher who is convicted of a crime as identified in OAR 259-008-0070 while employed by a public or private public safety agency must notify the agency head within 72 hours of conviction.

(b) When an agency receives notification of a conviction from its employee or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of conviction.

(4) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(5) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by a degree-granting college or university accredited by a recognized national or regional accrediting body, or recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(6) Academic Proficiency Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic telecommunicator or EMD training.

(a) The hiring agency is responsible for ensuring a telecommunicator/EMD proficiency test or validated written test designed to evaluate predictors of job-related skills and behavior has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic telecommunicator or EMD training.

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

(c) Individuals who have successfully completed training resulting in the award of certification in the discipline they are applying for training are exempt from this testing requirement. Individuals must submit proof of training and certification.

(7) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed health professional.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, and not more than 90 days after the initial offer of employment.

(b) The examination must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(c) Individuals who have successfully completed a physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(d) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment or re-employment in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(e) Notwithstanding subsection (d), a medical examination may be required by a hiring agency at its discretion.

(f) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a Telecommunicator or Emergency Medical Dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (d) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any Telecommunicator or Emergency Medical Dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others.

(A) The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(B) If the applicant cannot meet the identified hearing standard without correction, the applicant may utilize hearing amplification devices to meet the hearing standard. The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) designated by the Department to verify that the applicant's corrected hearing meets the Board's minimum hearing standard.

(h) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and exhibit normal speech patterns, sufficient to perform speaking-related essential tasks.

(8) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(9) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T) or a signed medical report completed by a licensed health professional identified by the Department containing, at a minimum, the information on Form F-2T prior to the acceptance into a basic course or any course where such a report is required by the Department. The Form F-2T will be furnished to the examining health professional by the hiring agency.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The appli-

cant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request.

(a) The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed.

(b) Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency.

(c) If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(d) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(e) If the Board denies a request for a waiver of any physical requirement set forth in section (7) of this rule, the Department will issue Notice and proceed as provided in section (13) of this rule.

(13) Contested Case Hearing Process for Denial of Waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: All contested case notice will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(c) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-0672.

(e) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(f) Proposed and Final Orders: In cases in which a hearing was requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

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

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 9-2010(Temp), f. & cert. ef. 10-15-10 thru 4-12-11; DPSST 13-2010, f. & cert. ef. 12-23-10; DPSST 9-2011, f. & cert. ef. 6-28-11; DPSST 14-2011, f. 9-26-11, cert. ef. 10-1-11; DPSST 5-2012, f. & cert. ef. 3-26-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 13-2014, f. & cert. ef. 6-24-14; DPSST 32-2014, f. 12-29-14, cert. ef. 1-1-15

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Rule Caption: To eliminate the need for tribal law enforcement units to submit a DPSST Form F-8.
Adm. Order No.: DPSST 33-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 259-008-0069
Subject: OAR 259-008-0069 outlines the requirements for individuals employed as public safety officers by a tribal government to be certified. Because DPSST does not have access to tribal court criminal records, tribal public safety officers were required to submit an Applicant Disclosure of Convictions in Tribal Jurisdiction (Form F-8), when submitting a Personnel Action Form (Form F-4) or an Application for Certification (Form F-7).

In 2013, the Violence Against Women Act gave tribal courts limited authority to prosecute and convict non-tribal members. This change means that any applicant for DPSST certification could potentially have a conviction in a tribal court. Further, officers employed by non-tribal agencies are only required to make a sworn statement that they have not been convicted of any crime, including traffic crimes, in any jurisdiction, including local, state, federal, and tribal. Additionally, unlike the Form F-8, these sworn statements do not need to be notarized. Falsification of information is subject to denial or revocation of certification.

DPSST has determined that the requirement that tribal public safety officers submit an Applicant Disclosure of Convictions in Tribal Jurisdiction (F-8 Form) is redundant. This rule change eliminates the need for tribal law enforcement units to submit a Form F-8.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-008-0069
Tribal Law Enforcement

(1) In order for individuals employed as public safety officers by a tribal government to be eligible for certification as a public safety officer:

(a) The tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8, applicable to law enforcement units.

(b) Tribal law enforcement units must annually complete an Annual Affidavit for Tribal Law Enforcement Units (Form F-8a).

(c) A certified public safety officer employed by a tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8, applicable to public safety officers.

(2) Failure of a tribal government to comply with any requirements of section (1) of this rule will result in the lapse of certification of all certified public safety officers employed with the affected tribal government. Upon reemployment as a public safety officer or upon compliance with requirements by a tribal government, a person whose certification has lapsed may apply for recertification in the manner provided in 2011 OR SB 412 and this rule.

(3) Tribal governments choosing to comply with the provisions of OR Laws 2011 Chapter 644 regarding authorized tribal police officers must submit a resolution to the Department that includes the following:

(a) A declaration of compliance with all requirements of OR Laws 2011 Chapter 644;

(b) Proof of insurance. Acceptable proof of insurance consists of:

(A) A full copy of the public liability and property damage insurance for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in the state of Oregon; or

(B) A description of the tribal government's self-insurance program which is in compliance with OR Laws 2011 Chapter 644.

(c) Tribal governments must file a written description of all material changes to insurance policies or the tribal government's self-insurance program with the Department within 30 days of the change.

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

Stat. Auth.: 2011 OL Ch. 644

Stats. Implemented: 2011 OL Ch. 644

Hist.: DPSST 15-2011(Temp), f. & cert. ef. 10-27-11 thru 3-28-12; DPSST 16-2011(Temp), f. & cert. ef. 11-28-11 thru 3-28-12; DPSST 3-2012, f. & cert. ef. 2-29-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 33-2014, f. 12-30-14, cert. ef. 1-1-15

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Rule Caption: To ensure compliance with the Federal Constitution and DOJ directives regarding same-sex marriage recognition.
Adm. Order No.: DPSST 34-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 12-30-14
Notice Publication Date: 12-1-2014
Rules Amended: 259-070-0010
Rules Repealed: 259-070-0010(T)
Subject: All state agencies administering state laws must recognize the marriages of same-sex couples validly performed in other jurisdictions to the same extent that they recognize other marriages validly performed in other jurisdictions. This direction has a direct impact on the administration of the Public Safety Memorial Fund program, as the spouses of public safety officers are named as eligible family members for the benefit, per ORS 243.954. To ensure compliance with the federal Constitution and DOJ directives, DPSST filed a temporary rule on August 11, 2014, to address this issue. This permanent rule change repeals the temporary rule.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-070-0010
Eligibility

(1) Eligibility of award applies to public safety officers who suffered a qualifying death or disability on or after October 23, 1999. Subject to availability of funds, the Board may award benefits to:

(a) Eligible family members of public safety officers who suffered a qualifying death or disability on or after October 23, 1999;

(b) A designee of a public safety officer who suffered a qualifying death or disability on or after January 1, 2008.

(c) Family members of public safety officers who suffered a qualifying death or disability after January 1, 1997, but prior to October 23, 1999 as described in Section 12, Chapter 981, Oregon Laws 1999.

(2) Prior to acceptance of an initial application, any individual applying for benefits based on a qualifying disability must provide satisfactory evidence that they meet the definition of "permanent total disability" found in ORS 656.206 and OAR 436-030-0055. Satisfactory evidence is established by submitting:

(a) Proof of Determination of Permanent Total Disability in compliance with the Worker's Compensation Division of the Department of Consumer and Business Services; or

(b) Competent written vocational testimony by a person fully certified by the State of Oregon to render vocational services that the applicant meets the definition of "permanent total disability" found in ORS 656.206 and OAR 430-030-0055.

(3) For the purposes of ORS 243.954(3)(a), "spouse" includes members of same-sex couples whose marriage was validly performed in another jurisdiction, effective January 1, 2014.

Stat. Auth.: ORS 243.970
Stats. Implemented: ORS 243.956
Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05; DPSST 1-2007, f. & cert. ef. 1-12-07; DPSST 20-2008, f. & cert. ef. 10-15-08; DPSST 18-2011, f. & cert. ef. 12-28-11; DPSST 22-2014(Temp), f. & cert. ef. 8-11-14 thru 2-6-15; DPSST 34-2014, f. & cert. ef. 12-30-14

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Rule Caption: To add the effective date for the Criminal Justice Commission's adopted definitions.
Adm. Order No.: DPSST 35-2014
Filed with Sec. of State: 12-30-2014
Certified to be Effective: 12-30-14
Notice Publication Date: 12-1-2014
Rules Amended: 259-020-0010, 259-020-0015
Subject: On December 26, 2012, DPSST adopted an administrative rule indicating that a conviction of a person felony or person class A misdemeanor, as defined by the Criminal Justice Commission (CJC), is a "course of behavior" that would render a polygraph examiner or trainee unable to perform the required duties. The rule language failed to include the effective date of the CJC definitions that were adopted. This rule change corrects this error.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-020-0010
Minimum Standards for a Polygraph Examiner Trainee License

(1) Any applicant for a license as a polygraph examiner trainee must:

(a)(A) Have graduated from a polygraph examiner's course approved by the Department; or

(B) Provide documentation of military experience or training that the Department determines is substantially equivalent to the education required by subsection (a)(A) above.

(b) Be at least 18 years of age;

(c) Be a citizen of the United States;

(d) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030.

(e) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:

(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;

(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;

(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or

(D) Engages in conduct involving untruthfulness.

(f) Provide any information required by the Department relating to the circumstances of a conviction, if the applicant has previously been convicted of a criminal offense. ORS 670.280 is applicable when the Department considers information provided under this paragraph.

(g) Be fingerprinted and submit one completed fingerprint card to the Department for submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay the costs of the state and federal fingerprint background checks.

(B) Currently employed corrections officers, parole and probation officers, or police officers as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(h) Submit a completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.

(i) Submit appropriate fees to the Department as prescribed by OAR 259-020-0035.

(2) The internship requirements of any person who is licensed as a trainee under this rule include:

(a) Periodic consultation with licensed general polygraph examiners of the trainee's own choice;

(b) A total review of 20 examinations from the first 200 examinations conducted must be reviewed by a licensed general polygraph examiner. The following review format is mandatory:

(A) 1st series — 5 examinations reviewed of the first 20 conducted;

(B) 2nd series — 5 examinations reviewed of the next 30 conducted;

(C) 3rd series — 5 examinations reviewed of the next 50 conducted;

(D) 4th series — 5 examinations reviewed of the last 100 conducted.

(E) During each review series, the trainee must have a general polygraph examiner complete a Polygraph Review Critique (DPSST Form F-203a) on each set of examinations reviewed. The trainee must forward the original critiques to the Department. One copy of the form must be retained by the reviewer, and one copy must be retained by the trainee. These reviews must be completed and forwarded to the Department within 30 days of the completion date of each of the four (4) series of examinations shown above. The Department will not renew a trainee license unless the trainee has complied with the examination requirements in this subsection.

(F) At least two of the review series must be completed with a general polygraph examiner during personal interviews. However, if time and distance are a distinct problem, up to two of the review series may be completed by mail. These review procedures cannot be interpreted as detracting from the trainee examiner's ability or expertise, but will be considered as legitimate, professional consultation.

(c) When participating in this prescribed course of study, trainees may administer specific issue examinations. If the trainee conducts a test which is to be offered as evidence in a court of law, the trainee must seek and utilize the assistance of a general polygraph examiner during the administration of the case and must have that general polygraph examiner available for continued consultation, including joint court appearances, if necessary. Each trainee should obtain legal advice concerning all questions relating to admissibility of polygraph examination evidence.

(d) Every trainee must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) must provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the trainee examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(e) A person may not hold a license as a trainee for more than two years. An extension of the two-year period may be granted for good cause.

(A) If the applicant requests an extension of time to hold the trainee license beyond the initial two year limitation, the Department may grant an extension to the date of the next regularly scheduled Polygraph Licensing Advisory Committee meeting. The applicant will be scheduled to appear at the next committee meeting. The applicant must provide his or her request

and justification for the extension, polygraph log, and the last ten polygraph reports and charts performed by the trainee. If just cause is presented, the Polygraph Licensing Advisory Committee may recommend an extension to the Department.

(B) The Polygraph Licensing Advisory Committee may recommend additional requirements that must be met during the extension period. Failure to complete any additional requirements imposed by the Department during an extension period may be grounds to deny any additional extension requests.

(f) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination.

(3) A trainee must not conduct more than five completed examinations, of any type, in any one calendar day.

(4) A trainee must not perform any type of review or provide a professional opinion of any completed polygraph examination performed by another polygraph examiner or polygraph trainee.

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 23-2008(Temp), f. & cert. ef. 12-29-08 thru 5-30-09; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 15-2012, f. & cert. ef. 6-28-12; DPSST 29-2012, f. & cert. ef. 12-26-12; DPSST 24-2014, f. & cert. ef. 10-1-14; DPSST 35-2014, f. & cert. ef. 12-30-14

259-020-0015
Minimum Standards for a Polygraph Examiner

(1) Any applicant for a license as a general polygraph examiner must:

(a) Be at least 18 years of age;

(b) Be a citizen of the United States;

(c) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030;

(d) For the purposes of this rule, an applicant demonstrates a course of behavior indicating they are unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public if the applicant:

(A) Has been convicted of a Person Felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;

(B) Has been convicted of a Person Class A Misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on February 4, 2014 or any crime with similar elements in any other jurisdiction;

(C) Demonstrates a lack of respect for the laws of this state and nation by engaging in a pattern of behavior which leads to 3 or more arrests; or

(D) Engages in conduct involving untruthfulness.

(e) If previously convicted for a criminal offense, provide information relating to the circumstances of the conviction as required by the Department. ORS 670.280 is applicable when the Department considers information provided under this paragraph;

(f) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No general license will be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section.

(B) Currently employed corrections officers, parole and probation officers, or police officers, as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(g)(A) Have received a baccalaureate degree from an accredited college or university; or

(B) Have graduated from high school or have been awarded a General Educational Development (GED) certificate; and have at least five years of active investigative experience before the date of the application.

(i) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil.

(ii) Administering polygraph examinations will satisfy the investigative experience requirement of this section.

(iii) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by this section.

(h) Have graduated from a polygraph examiner's course approved by the Department and have completed at least 200 examinations, or have worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and have satisfactorily completed at least 200 examinations.

(i) An applicant may meet the requirements of subsection (f) and (g) of this section if the applicant provides the Department with documentation of military training or experience that the Department determines is substantially equivalent to the education or experience requirements.

(j) Have successfully completed an examination conducted by the Department in consultation with the Advisory Committee as defined in OAR 259-020-0055, to determine competency to act as a polygraph examiner. The Department, in consultation with the Advisory Committee, will prescribe the manner and contents of any examination conducted by the Department under provisions of the Act.

(k) Submit a fully-completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as required by the Department.

(l) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required under OAR 259-020-0015 must take the general license examination within 12 months of completing the required exams.

(3) The Department in consultation with the advisory committee may prescribe requirements for:

(a) The internship of an applicant who fails to pass the first or second oral or written part of the examination described in OAR 259-020-0015(1)(h);

(b) An applicant who resides in a state other than Oregon. The minimum requirements for an out-of-state examiner who does not qualify under ORS 703.130 must include:

(A) Substantial compliance with the applicable requirements for in-state examiners;

(B) A log meeting Oregon guidelines;

(C) Passing the Oregon licensing examination;

(D) Submitting at least 20 of the last 100 polygraph examinations conducted to a licensed Oregon general polygraph examiner for review. A Polygraph Review Critique (DPSST Form F-203a) must be completed on the examinations and provided to the Department for review by the Polygraph Licensing Advisory Committee; and

(E) Demonstrating proficiency in the field of polygraphy by an oral interview with the Polygraph Licensing Advisory Committee.

(c) Any individual whose license has expired for a period of more than two years and who reapplies for licensure. These requirements may include, but are not limited to:

(A) Documentation indicating any necessary training requirements have been met; and

(B) Verification that the individual has the current knowledge, skills and ability to perform the duties of a polygraph examiner.

(4) The Department will immediately suspend an applicant's trainee license if the applicant fails the third examination. The applicant may submit a new application for a general license only after retaking and successfully completing a polygraph examiner's course approved by the Department and meeting any additional requirements.

(5) The Director, acting on the written recommendation of the Polygraph Examiners Licensing Advisory Committee, may require a licensed general polygraph examiner to appear for reexamination as directed.

(a) In preparing its written recommendation, the Committee must identify the good cause reasons for its recommendation.

(b) Based on the written recommendation, the reexamination may include the written examination, the oral examination, or both.

(c) Failure of the licensee to comply with the directive to appear for reexamination will result in the suspension of the license by the Department, until the licensee appears as directed.

(6) Every examiner must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) will provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless any applicable Oregon State Archives Records Retention Schedules require longer retention.

(7) An examiner must not conduct more than five (5) completed examinations, of any type, in any one calendar day.

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.210 & 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 1-2009, f. & cert. ef. 2-2-09; DPSST 10-2010, f. 10-15-10, cert. ef. 11-1-10; DPSST 19-2011, f. & cert. ef. 12-30-11; DPSST 2-2012(Temp), f. & cert. ef. 2-24-12 thru 8-15-12; DPSST 15-2012, f. & cert. ef. 6-28-12; DPSST 29-2012, f. & cert. ef. 12-26-12; DPSST 35-2014, f. & cert. ef. 12-30-14

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Rule Caption: Adopt NWCG National Incident Management System, Wildland Fire Qualification System Guide, PMS 310-1, October 2013.

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Subject: This rule change adopts the National Wildfire Coordinating Group (NWCG) National Incident Management System, Wildland Fire Qualification System Guide, PMS 310-1, Edition October 2013, as the standard for training requirements.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-009-0005

Definitions

(1) "Agency Head" means the chief officer of a fire service agency directly responsible for the administration of that unit.

(2) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(5) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(6) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(7) "Content Expert" means a person who documents their experience, knowledge, training and education for the purposes of course instruction.

(8) "Content Level Course" is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(9) "Department" means the Department of Public Safety Standards and Training.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Field Training Officer" means an individual who is authorized by a fire service agency or by the Department to sign as verifying completion of tasks required by task books.

(12) "Fire and Life Safety Educator I" means a person who has demonstrated the ability to coordinate and deliver existing education programs and information.

(13) "Fire and Life Safety Educator II" means a person who has demonstrated the ability to prepare educational programs and information to meet identified needs.

(14) "Fire and Life Safety Educator III" means a person who has demonstrated the ability to create, administer, and evaluate educational programs and information.

(15) "Fire Company" means a group of fire fighters, usually three or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(16) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(17) "Fire Fighter I" means a person at the first level of progression who has demonstrated the knowledge and skills to function as an integral member of a fire-fighting team under direct supervision in hazardous conditions.

(18) "Fire Fighter II" means a person at the second level of progression who has demonstrated the skills and depth of knowledge to function under general supervision.

(19) "Fire Ground Leader" means a Fire Service Professional who is qualified to lead emergency scene operations."

(20) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(21) "Fire Service Agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(22) "Fire Service Professional" means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(23) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing or supervising a fire service agency training program.

(24) "First Responder" means an "NFPA Operations Level Responder."

(25) "Juvenile Firesetter Intervention Specialist I" means a person who has demonstrated the ability to conduct an intake/interview with a firesetter and his or her family using prepared forms and guidelines and who, based on program policies and procedures, determines the need for referral for counseling and/or implements educational intervention strategies to mitigate effects of fire setting behavior.

(26) "Juvenile Firesetter Intervention Specialist II" means a person who has demonstrated the ability to manage juvenile firesetting intervention program activities and the activities of Juvenile Firesetter Intervention Specialist I.

(27) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(28) "NFPA Aircraft Rescue and Fire-Fighting Apparatus" means a Fire Service Professional who has met the requirements of Fire Fighter II as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, NFPA Airport Fire Fighter as specified in NFPA 1003 and the job performance requirements defined in NFPA 1002 Sections 9.1 and 9.2.

(29) "NFPA Airport Firefighter" means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(30) "NFPA Apparatus Equipped with an Aerial Device" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 6.1 and 6.2.

(31) "NFPA Apparatus Equipped with a Tiller" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, Apparatus Equipped with an Aerial Device as specified in NFPA 1002 Chapter 6 and the job performance requirements defined in NFPA 1002 Sections 7.2.

(32) "NFPA Apparatus Equipped with Fire Pump" means a Fire Service Professional who has met the requirements of Fire Fighter I as

specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 5.1 and 5.2.

(33) "NFPA Cargo Tank Specialty" means a person who provides technical support pertaining to cargo tank cars, provides oversight for product removal and movement of damaged cargo tanks, and acts as liaison between technicians and outside resources.

(34) "NFPA Confined Space Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 7 sections 7.1 and 7.2.

(35) "NFPA Dive Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 sections 11.1 and 11.2, and Chapter 13 sections 13.1 and 13.2.

(36) "NFPA Fire Apparatus Driver/Operator" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1002, Chapter 4 sections 4.2 and 4.3.

(37) "NFPA Fire Fighter I" means a member of a fire service agency who has met the Level I job performance requirements of NFPA standard 1001 (sometimes referred to as a journeyman fire fighter).

(38) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent Level II job performance requirements of NFPA Standard 1001 (sometimes referred to as a senior fire fighter).

(39) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the Level I job performance requirements of NFPA Standard 1031.

(40) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the Level II job performance requirements of NFPA standard 1031.

(41) "NFPA Fire Inspector III" means an individual at the third and most advanced level of progression who has met the job performance requirements specified in this standard for Level III. The Fire Inspector III performs all types of fire inspections, plans review duties, and resolves complex code-related issues.

(42) "NFPA Fire Instructor I" means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapts lesson plans to the unique requirements of the students and the authority having jurisdiction; organizes the learning environment so that learning is maximized; and meets the record-keeping requirements of the authority having jurisdiction.

(43) "NFPA Fire Instructor II" means a fire service instructor who, in addition to meeting NFPA Fire Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for specific topics, including learning objectives, instructional aids, and evaluation instruments; schedules training sessions based on an overall training plan for the authority having jurisdiction; and supervises and coordinates the activities of other instructors.

(44) "NFPA Fire Instructor III" means a fire service instructor who, in addition to meeting NFPA Fire Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conducts organization needs analysis; and develops training goals and implementation strategies.

(45) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of a fire. This individual has met the job performance requirements of NFPA Standard 1033.

(46) "NFPA Fire Officer I" means a fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications (company officer rank).

(47) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021 (station officer, battalion chief rank).

(48) "NFPA Fire Officer III" means a fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021 (district chief, assistant chief, division chief, deputy chief rank).

(49) "NFPA Fire Officer IV" means a fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021(fire chief).

(50) "NFPA Incident Commander" (IC) means a person who is responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources.

(51) "NFPA Intermodal Tank Specialty" means a person who provides technical support pertaining to intermodal tanks, provides oversight for product removal and movement of damaged intermodal tanks, and acts as a liaison between technicians and outside resources.

(52) "NFPA Hazardous Materials Safety Officer" means a person who works within an incident management system (IMS), specifically, the hazardous materials branch/group, to ensure that recognized hazardous materials or weapons of mass destruction (WMD) safe practices are followed at hazardous materials or WMD incidents.

(53) "NFPA Hazardous Materials Technician" means a person who responds to hazardous materials or WMD incidents using a risk-based response process where they analyze a problem involving hazardous materials or WMD, select applicable decontamination procedures, and control a release using specialized protective and control equipment.

(54) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(55) "NFPA Marine Tank Vessel Specialty" means a person who provides technical support pertaining to marine tank vessels, provides oversight for product removal and movement of damaged marine tank vessels, and acts as a liaison between technicians and outside resources.

(56) "NFPA Mobile Water Supply Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 10.1 and 10.2.

(57) "NFPA Operations Level Responder" means a person who responds to hazardous materials or WMD incidents for the purpose of implementing or supporting actions to protect nearby persons, the environment, or property from the effects of the release.

(58) "NFPA Rope Rescue — Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.1.

(59) "NFPA Rope Rescue — Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.2.

(60) "NFPA Structural Collapse Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 9 sections 9.1 and 9.2.

(61) "NFPA Surf Rescue" means a Fire Service Professional who had met the job performance requirements defined in NFPA 1006, Chapter 11 sections 11.1 and 11.2, and Chapter 15 sections 15.1 and 15.2.

(62) "NFPA Surface Water Rescue — Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.1.

(63) "NFPA Surface Water Rescue — Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.2.

(64) "NFPA Swiftwater Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 sections 6.1 and 6.2, Chapter 11 sections 11.1 and 11.2, and Chapter 12 sections 12.1 and 12.2.

(65) "NFPA Tank Car Specialty" means a person who provides technical support pertaining to tank cars, provides oversight for product removal and movement of damaged tank cars, and acts as a liaison between technicians and outside resources.

(66) "NFPA Trench Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 8 sections 8.1 and 8.2.

(67) "NFPA Vehicle and Machinery Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 10 sections 10.1 and 10.2.

(68) "NFPA Wildland Fire Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 8.1 and 8.2.

(69) "NWCG Firefighter Type 2 (FFT2)" means a person who is the basic resource used in the control and extinguishment of wildland fires and works either as an individual or as a member of a crew under the supervision of a higher qualified individual.

(70) "NWCG Firefighter Type 1 (FFT1)" means a person who is a working leader of a small group (usually not more than seven members) and is responsible for keeping assigned personnel fully employed on assigned jobs. Normally this position is supervised by a Single Resource Crew Boss but may be assigned independently on occasion.

(71) "NWCG Single Resource Boss (CRWB, ENGB, FELB, FIRB, HEQB or HMGB)" means a person who is responsible for supervising and directing a fire suppression module, such as a hand crew, engines, one or more fallers, a firing team, heavy equipment or helicopters.

(72) "NWCG Task Force Leader (TFLD) / NWCG Strike Team Leader Engine (STEN)" means a person who is the ICS position responsible for supervising a task force of resources. The NWCG Strike Team Leader Engine (STEN) is the ICS position responsible for the direct supervision of a strike team of engines. Both positions report to a Division/Group Supervisor or Operations Section Chief.

(73) "NWCG Division/Group Supervisor (DIVS)" means a person who is the ICS position responsible for supervising equipment and personnel assigned to a division or group. Reports to a Branch Director or Operations Section Chief.

(74) "Public Information Officer" means a person who has demonstrated the ability to conduct media interviews and prepare news releases and media advisories.

(75) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and abilities of a certification level.

(76) "Staff" means employees occupying full-time, part-time, or temporary positions with the Department.

(77) "Task Performance" means to demonstrate the ability to perform tasks of a certification level, in a controlled environment, while being evaluated.

(78) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(79) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(80) "Track" means a field of study required for certification.

(81) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11; DPSST 12-2011, f. & cert. ef. 8-1-11; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 6-2014, f. & cert. ef. 2-6-14; DPSST 9-2014, f. & cert. ef. 4-3-14; DPSST 36-2014, f. & cert. ef. 12-31-14

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by:

(a) Satisfactorily completing the requirements specified in section (2) of this rule;

(b) Through participation in a fire service agency training program accredited by the Department;

(c) Through a course certified by the Department; or

(d) By evaluation of experience as specified in OAR 259-009-0063.

(e) The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2013 Edition, entitled "Fire Fighter Professional Qualifications";

(A) Delete section 1.3.1.

NOTE: This references NFPA 1500.

(B) Delete section 2.2.

NOTE: This references NFPA 1500 and 1582.

(C) For certification as Fire Fighter II, the applicant must be certified at NFPA 1001 Fire Fighter I as defined by the Department and meet the job performance requirements defined in Sections 6.1 through 6.5.5 of this Standard.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Fighter I and NFPA Fire Fighter II. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2009 Edition, entitled "Standard for Fire Apparatus Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 5.1 General. The job performance requirements defined in Sections 5.1 and 5.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program".

(H) All applicants for certification must complete a task performance evaluation or a Department-approved task book for: NFPA Fire Apparatus Driver/Operator, NFPA Apparatus Equipped with Fire Pump, NFPA Apparatus Equipped with an Aerial Device, NFPA Apparatus Equipped with a Tiller, NFPA Wildland Fire Apparatus, NFPA Aircraft Rescue and Firefighting Apparatus or NFPA Mobile Water Supply Apparatus. The task books must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(c) The provisions of the NFPA Standards 1003, 2010 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications".

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department and the job performance requirements defined in sections 5.1 through 5.4, must be met.

(B) All applicants for certification must complete a Department-approved task book for Airport Fire Fighter. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled "Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) Delete section 2.2.

NOTE: This references NFPA 1500.

(B) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(C) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(D) All applicants for certification must complete a Department approved task book for Marine Fire Fighting for Land Based Fire Fighters. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(E) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009 will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department-approved task book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a NFPA Fire Inspector I; and

(ii) Successfully complete a Department-approved task book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a NFPA Fire Inspector II; and

(ii) Successfully complete a Department-approved task book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department-approved task book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department's Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a task book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve Field Training Officers with equivalent training, education and experience.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2010, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) A task book will be completed prior to certification as a NFPA Public Fire and Life Safety Educator I, II or III. The Task Book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) A task book will be completed prior to certification as a NFPA Public Information Officer. The task took must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(C) A task book will be completed prior to certification as a NFPA Juvenile Firesetter Intervention Specialist I and II. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(h) The provisions of the NFPA Standard No. 1041, Edition of 2012, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the successful completion of an approved task book for NFPA Fire Instructor I, II and III.

(i) The provisions of the NFPA Standard 1021, 2009 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as NFPA Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.1 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department- approved equivalent courses in the following areas of study: Communications, Math, Physics, Chemistry, or Fire Behavior and Combustion. Refer to the suggested course guide for detailed course, curriculum and training information.

(ii) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer I. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.1 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department- approved equivalent courses Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department-approved equivalent courses.

(iii) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer II. The evaluation or task book must be approved off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.1 through 6.7 of the Standard.

(i) All applicants for certification must complete a Department-approved task book for NFPA Fire Officer III.

(ii) The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.1 through 7.7 of the Standard.

(i) All applicants for certification must complete a Department-approved task book for NFPA Fire Officer IV.

(ii) The task book must be approved by the Agency Head or Training Officer, before an applicant can qualify for certification.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in all of the following areas:

(i) Building Construction: Non-Combustible and Combustible;

(ii) Emergency Service Delivery;

(iii) Fire Behavior;

(iv) Fire Ground Safety; and

(v) Water Supply Operations.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for Fire Ground Leader. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(l) NWCG Firefighter Type 2 (FFT2).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter (FFT2) must document training in all of the following areas at the time of application:

(i) S-130 Firefighter Training;

(ii) S-190 Wildland Fire Behavior;

(iii) L-180 Human Factors on the Fireline;

(iv) I-100 Introduction to ICS.

(v) NIMS, Introduction IS700; and

(vi) I-100 Introduction to ICS or IS100.

(m) NWCG Firefighter Type 1 (FFT1).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter Type 1 (FFT1) must be certified as a NWCG Firefighter Type 2 (FFT2) prior to applying for NWCG Firefighter Type 1 (FFT1) and must document training in all of the following areas at the time of application:

(i) S-131 Firefighter Type I;

(ii) S-133 Look Up, Look Down, Look Around;

(iii) Annual Fireline Safety Refresher (RT-130); and

(iv) Completion of the NWCG Firefighter Type 1 (FFT1)/Incident Commander Type 5 (ICT5) Task Book.

(n) NWCG Single Resource, Engine Boss (ENGB).

(A) This is an NWCG standard.

(B) An individual applying for NWCG Single Resource, Engine Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Engine Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 or Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior;

(iv) NIMS I-200 or IS200;

(v) Annual Fireline Safety Refresher (RT-130); and

(vi) Completion of the task book for NWCG Single Resource Engine Boss

(o) NWCG Single Resource, Crew Boss (CRWB.)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource Crew Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying

for NWCG Single Resource Crew Boss and must document training in all of the following areas at the time of application:

(i) S-230 Crew Boss (Single Resource);

(ii) S-290 Intermediate Wildland Fire Behavior;

(iii) NIMS I-200 or IS200;

(iv) Annual Fireline Safety Refresher (RT-130); and

(v) Completion of the task book for NWCG Single Resource Crew Boss.

(p) NWCG Single Resource, Heavy Equipment Boss (HEBQ).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Heavy Equipment Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Heavy Equipment Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior;

(iv) Annual Fireline Safety Refresher (RT-130); and

(v) Completion of the task book for NWCG Single Resource, Heavy Equipment Boss.

(q) NWCG Single Resource, Felling Boss (FELB).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Felling Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Felling Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior;

(iv) Annual Fireline Safety Refresher (RT-130); and

(v) Completion of the task book for NWCG Single Resource, Felling Boss.

(r) NWCG Single Resource, Firing Boss (FIRB)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Firing Boss must be certified as NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Firing Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior;

(iv) Annual Fireline Safety Refresher (RT-130); and

(v) Completion of the task book for NWCG Single Resource, Firing Boss

(s) NWCG Strike Team Leader Engine (STEN.)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Strike Team Leader Engine (STEN) must be certified as NWCG Single Resource, Engine Boss prior to applying for NWCG Strike Team Leader Engine and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the Wildland Urban Interface WUI;

(ii) S-330 Task Force Strike Team Leader;

(iii) I-300 Incident Command Systems for Expanding Incidents;

(iv) NRF: Introduction IS800B;

(v) Annual Fireline Safety Refresher (RT-130); and

(vi) Completion of the task book for NWCG Strike Team Leader Engine.

(t) NWCG Task Force Leader (TFLD).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Task Force Leader (TFLD) must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operation in the Wildland Urban Interface (WUI);

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Incident Command Systems for Expanding Incidents;

(iv) NRF: Introduction IS800B;

(v) Annual Fireline Safety Refresher (RT-130); and

(vi) Completion of the task book for NWCG Task Force Leader.

(u) NWCG Division/Group Supervisor (DIVS).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Division/Group Supervisor must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor;

(iii) Annual Fireline Safety Refresher (RT-130); and

(iv) Completion of the task book for NWCG Division/Group Supervisor.

(v) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:

(A) The application must be submitted with the fire chief or designee's signature attesting to the skill level and training of the applicant.

(B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(C) All applications received after October 1, 2004, will need to show completion of the approved task book.

(w) Certification guide for Wildland Fire Investigator (August, 2005).

(x) The provisions of the 2008 Edition of NFPA 1006 entitled, "Standards for Technical Rescuer Professional Qualifications" are adopted subject to the following modifications:

(A) Historical Recognition:

(i) Applicants who currently hold active Department of Public Safety Standards and Training NFPA Surface Water Rescue Technician and NFPA Rope Rescue levels of certification may apply for NFPA Swiftwater Rescue level of certification.

(ii) The NFPA Technical Rescuer application for certification under (i) above must be submitted to the Department of Public Safety Standards and Training on or before December 30, 2011.

(B) Instructors:

(i) Curriculum must be certified by the Department to meet NFPA 1006 standards.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(C) Task Books:

(i) A task book must be completed for each of the eleven specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can approve the task book.

(iii) The requirements in Chapters 4 and 5 only need to be met once for all eleven specialty rescue areas.

(y) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer; and

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application attesting to completion of the required training.

(z) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications:

(A) NFPA Hazardous Materials Technician: All applicants for certification must first certify as an NFPA Operations Level Responder and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) NFPA Hazardous Materials Safety Officer: All applicants for certification must first certify as a NFPA Hazardous Materials Technician and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "NFPA Hazardous Materials Incident Commander." The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an NFPA Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "NFPA Operations Level Responder." The NFPA Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an NFPA Operations Level Responder.

(aa) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a NFPA Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

(i) NFPA Cargo Tank Specialty;

(ii) NFPA Intermodal Tank Specialty;

(iii) NFPA Marine Tank Vessel Specialty;

(iv) NFPA Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, will be required prior to certification. Such examinations will be conducted in the following manner:

(a) Task performance competency will be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures must be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, will be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a task performance evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11; DPSST 7-2012, f. & cert. ef. 3-28-12; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13; DPSST 16-2013, f. & cert. ef. 6-25-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 6-2014, f. & cert. ef. 2-6-14; DPSST 9-2014, f. & cert. ef. 4-3-14; DPSST 36-2014, f. & cert. ef. 12-31-14

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Rule Caption: Updates fingerprint requirements; allows summary staff disposition or administrative closure in cases involving discretionary convictions.

Adm. Order No.: DPSST 37-2014

Filed with Sec. of State: 12-31-2014

Certified to be Effective: 12-31-14

Notice Publication Date: 12-1-2014

Rules Amended: 259-009-0059, 259-009-0070

Subject: Current rule does not require fingerprint submission for fire service professionals applying for certification who have never been fingerprinted. This rule change remedies this oversight. Further, because the maximum period of ineligibly for discretionary disqualifying misconduct is seven years, DPSST cannot take action on any discretionary conviction occurring over seven years ago. The implementation of the denial and revocation procedure for fire service professionals used the date of the conviction to dictate DPSST's action. Since it will have been more than seven years since the implementation date (January 15, 2008), the language found in rule is no longer relevant and often creates confusion amongst constituents. This rule change does not alter the intent of the original procedure, but simply updates the rule language to allow for summary staff disposition or administrative closure in cases involving discretionary convictions occurring seven years or more prior to the date of review. Several housekeeping changes have been made for consistency.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-009-0059

Minimum Standards for Employment as a Fire Service Professional

(1) No person may be certified as a Fire Service Professional who is not 18 years of age.

(2) Only training received after attaining the age of 16 will be applied for certification purposes.

(3) DPSST Fire Service Agency affiliation must be attained after the age of 16 via submission of a Personnel Agency Form.

(4) Fingerprints. Any individual utilized by a fire service agency that has never been fingerprinted or is identified in the Oregon LEDS system as a multi-source offender is required to be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and must forward one card with the appropriate fees to the Department.

(5) Notification of Conviction:

(a) A fire service professional or instructor who is convicted of a crime, as identified in OAR 259-009-0070, while employed by a fire service agency, must notify the agency head within five business days of the conviction.

(b) When an agency receives notification of a conviction from a fire service professional, instructor, or another source, the agency must notify the Department within 30 calendar days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

Stat. Auth.: ORS 181.610 & 181.640

Stats. Implemented: ORS 181.610 & 181.640

Hist.: DPSST 1-2006(Temp), f. & cert. ef. 1-23-06 thru 6-1-06; DPSST 5-2006, f. & cert. ef. 5-3-06; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 37-2014, f. & cert. ef. 12-31-14

259-009-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards will be upheld at all times, unless the Board determines that the safety of the public or respect of the profession is compromised.

(2) Definitions. For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (7) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(4).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

(d) "Revocation" or "Revoke" means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (7) of this rule.

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted Aggravated Murder;

163.115 Attempted Murder;

163.115 Murder;

163.118 Manslaughter in the First Degree;

163.125 Manslaughter in the Second Degree;

163.149 Aggravated Vehicular Homicide;

163.175 Assault in the Second Degree;

163.185 Assault in the First Degree;

163.225 Kidnapping in the Second Degree;

163.235 Kidnapping in the First Degree;

163.365 Rape in the Second Degree;

163.375 Rape in the First Degree;

163.395 Sodomy in the Second Degree;

163.405 Sodomy in the First Degree;

163.408 Sexual Penetration in the Second Degree;

163.411 Sexual Penetration in the First Degree;

163.427 Sexual Abuse in the First Degree;
163.670 Using a Child in a Display of Sexually Explicit Conduct;
164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));
164.405 Robbery in the Second Degree;
164.415 Robbery in the First Degree;
167.017 Compelling Prostitution.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(A) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public;

(C) Gross Misconduct: An act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance;

(D) Incompetence: A demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct;

(E) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

(4) Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a fire service professional or instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

25.785(3) (False Submission Social Security Number) – Category I;
92.337 (Furnishing False Information or Making a False Representation) – Category I;
162.015 (Bribe Giving) — Category III;
162.025 (Bribe Receiving) — Category III;
162.065 (Perjury) — Category I;
162.117 (Public Investment Fraud) — Category I;
162.155 (Escape in the Second Degree) — Category II;
162.165 (Escape in the First Degree) — Category II;
162.185 (Supplying Contraband) — Category II;
162.205 (Failure to Appear in the First Degree) — Category II;
162.265 (Bribing a Witness) — Category III;
162.275 (Bribe Receiving by a Witness) — Category III;
162.285 (Tampering with a Witness) — Category III;
162.305 (Tampering with Public Records) — Category III;
162.325 (Hindering Prosecution) — Category III;
162.355 (Simulating Legal Process) — Category III;
162.365 (Criminal Impersonation) — Category I;
162.367 (Criminal Impersonation of a Peace Officer) — Category I;
162.415 (Official Misconduct in the First Degree) — Category II;
163.145 (Criminally Negligent Homicide) — Category III;
163.160 (Assault in the Fourth Degree) — Category III;
163.165 (Assault in the Third Degree) — Category III;
163.205 (Criminal Mistreatment in the First Degree) — Category III;
163.207 (Female Genital Mutilation) — Category III;
163.208 (Assaulting a Public Safety Officer) — Category III;
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) — Category II;
163.245 (Custodial Interference in the Second Degree) — Category III;
163.257 (Custodial Interference in the First Degree) — Category III;
163.275 (Coercion) — Category III;
163.355 (Rape in the Third Degree) — Category III;
163.425 (Sexual Abuse in the Second Degree) — Category III;
163.465 (Public Indecency) — Category III;
163.515 (Bigamy) — Category III;
163.525 (Incest) — Category III;
163.535 (Abandonment of a Child) — Category III;
163.537 (Buying or Selling a Person Under 18 years of age) — Category III;
163.547 (Child Neglect in the First Degree) — Category III;
163.555 (Criminal Non-Support) — Category III;
163.684 (Encouraging Child Sexual Abuse in the First Degree) — Category III;
163.686 (Encouraging Child Sexual Abuse in the Second Degree) — Category III;
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;
163.732 (Stalking) — Category III;
163.750 (Violating Court's Stalking Protective Order) — Category III;
164.045 (Theft in the Second Degree) — Category I;
164.055 (Theft in the First Degree) — Category I;
164.057 (Aggravated Theft in the First Degree) — Category I;
164.075 (Theft by Extortion) — Category I;
164.125 (Theft of Services: by Deception) — Category I;
164.135 (Unauthorized Use of a Vehicle) — Category I;
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) — Category I;
164.170 (Laundering a Monetary Instrument) — Category I;
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) — Category I;
164.215 (Burglary in the Second Degree) — Category III;
164.225 (Burglary in the First Degree) — Category III;
164.235 (Possession of a Burglary Tool or Theft Device) — Category III;
164.315 (Arson in the Second Degree) — Category II;
164.325 (Arson in the First Degree — If not a conviction under ORS 137.700) — Category II;
164.365 (Criminal Mischief in the First Degree) — Category III;
164.377 (Computer Crime) — Category III;
164.395 (Robbery in the Third Degree) — Category III;
164.868 (Unlawful Labeling of a Sound Recording) — Category III;
164.869 (Unlawful Recording of a Live Performance) — Category III;
164.872 (Unlawful Labeling of a Videotape Recording) — Category III;
164.885 (Endangering Aircraft) — Category II;
164.889 (Interference with Agricultural Research) — Category III;
165.013 (Forgery in the First Degree) — Category I;
165.022 (Criminal Possession of a Forged Instrument in the First Degree) — Category I;
165.032 (Criminal Possession of a Forgery Device) — Category I;
165.055 (Fraudulent Use of a Credit Card: Felony Only) — Category I;
165.065 (Negotiating a Bad Check) — Category I;
165.070 (Possessing Fraudulent Communications Device) — Category I;
165.074 (Unlawful Factoring of Payment Card Transaction) — CategoryI;
165.085 (Sports Bribery) — Category III;
165.090 (Sports Bribe Receiving) — Category III;
165.579 (Cellular Counterfeiting in the Second Degree) — Category III;
165.581 (Cellular Counterfeiting in the First Degree) — Category III;
165.692 (Making False Claim for Health Care Payment) — Category I;
165.800 (Identity Theft) — Category I;
165.810 (Unlawful Possession of a Personal Identification Device) — Category I;
165.813 (Unlawful Possession of Fictitious Identification) — Category I;
166.005 (Treason) — Category II;
166.015 (Riot) — Category II;
166.085 (Abuse of Corpse in the Second Degree) — Category II;
166.087 (Abuse of Corpse in the First Degree) — Category II;
166.155 (Intimidation in the Second Degree) — Category III;
166.165 (Intimidation in the First Degree) — Category III;
166.220 (Unlawful Use of Weapon) — Category II;
166.270 (Possession of Weapons by Certain Felons: Felony only) — Category II;
166.275 (Possession of Weapons by Inmates of Institutions) — Category II;
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) — Category II;
166.382 (Possession of Destructive Device Prohibited) — Category II;
166.384 (Unlawful Manufacture of Destructive Device) — Category II;
166.429 (Firearms Used in Felony) — Category II;
166.438 (Transfer of Firearms at Gun Shows: Felony Only) — Category II;
166.450 (Obliteration or Change of Identification Number on Firearms) — Category II;
166.642 (Felon in Possession of Body Armor) — Category II;
166.643 (Unlawful Possession of Body Armor) — Category II;
166.649 (Throwing an Object Off an Overpass in the Second Degree) — Category III;
166.651 (Throwing an Object Off an Overpass in the First Degree) — Category III;
166.660 (Unlawful Paramilitary Activity) — Category III;
166.720 (Racketeering Activity Unlawful) — Category II;
167.012 (Promoting Prostitution) — Category III;
167.062 (Sadomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) — Category III;
167.164 (Possession of Gray Machine) — Category I;
167.212 (Tampering with Drug Records) — Category I;
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) — Category III;

167.322 (Aggravated Animal Abuse in the First Degree) — Category III;
167.339 (Assaulting Law Enforcement Animal) — Category III;
305.815 (False Return, Statement or Document) – Category I;
411.630 (Unlawfully Obtaining Public Assistance) – Category I;
411.675 (Submitting Wrongful Claim for Payment) – Category I;
411.840 (Unlawfully Obtaining or Disposing of Supplemental Nutrition Assistance) – Category I;
433.010(1) (Willfully Causing the Spread of Communicable Disease) – Category II;
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) — Category II;
475.846 (Unlawful Manufacture of Heroin) — Category II;
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) — Category III;
475.850 (Unlawful Delivery of Heroin) — Category II;
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) — Category III;
475.854 (Unlawful Possession of Heroin) — Category II;
475.856 (Unlawful Manufacture of Marijuana) — Category II;
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) — Category III;
475.860 (Unlawful Delivery of Marijuana: Felony only) — Category II;
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) — Category III;
475.864 (Unlawful Possession of Marijuana: Felony only) — Category II;
475.866 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;
475.868 (Unlawful Manufacture of 3,4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) — Category III;
475.870 (Unlawful Delivery of 3,4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;
475.872 (Unlawful Delivery of 3.4-Methylenedioxymethamphetamine (Ecstasy) Within 1,000 Feet of School) — Category II;
475.874 (Unlawful Possession of 3.4-Methylenedioxymethamphetamine (Ecstasy)) — Category II;
475.876 (Unlawful Manufacture of Cocaine) — Category II;
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) — Category III;
475.880 (Unlawful Delivery of Cocaine) — Category II;
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) — Category III;
475.884 (Unlawful Possession of Cocaine) — Category II;
475.886 (Unlawful Manufacture of Methamphetamine) — Category II;
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) — Category III;
475.890 (Unlawful Delivery of Methamphetamine) — Category II;
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) — Category III;
475.894 (Unlawful Possession of Methamphetamine) — Category II;
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) — Category III;
475.908 (Causing Another Person to Ingest a Controlled Substance) — Category III;
475.910 (Application of Controlled Substance to the Body of Another Person) — Category III;
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) — Category II;
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) — Category II;
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) — Category II;
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) — Category II;
476.150 (Entry and Inspection of Premises; Interfering or Preventing Entry) – Category II;
476.380 (Burning without a Permit) – Category II;
476.510 to 476.610 (Violations of the Emergency Conflagration Act) – Category II;
532.140 (Branding or Marking Forest Products and Booming Equipment with the Intent to Injure or Defraud) – Category I;
632.470 (False Representation as to Raising, Production or Packing, Class A Misdemeanor) – Category I;
632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products, Class A Misdemeanor) – Category I;
659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) – Category I;
688.120 (Fraudulent Representation) – Category I;
689.995(3) (Willfully Furnishing False Information) – Category I;
689.995(4) (Making or Causing to be Made Any False Representations) – Category I;
731.260 (False or Misleading Filings) – Category I;
759.360(2) and (3)(False Statements or False Representation) – Category I;
811.182 (Criminal Driving While Suspended or Revoked) — Category II;
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) — Category II;
811.705 (Failure to Perform Duties of a Driver to Person Injured) — Category II;
813.010 (DUII: Felony Only) — Category II.

(A) Any crime that requires the fire service professional or instructor to register as a sex offender;

(B) "Attempt," "Solicitation," or "Conspiracy" to commit any crime identified in OAR 259-009-0070(3), in any jurisdiction;

(C) "Attempt", "Solicitation," or "Conspiracy" to commit any crime identified in OAR 259-009-0070(4), resulting in a conviction of a felony or Class A misdemeanor, in any jurisdiction.

(5) Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct.

(a) The Department may take action on any conviction constituting discretionary disqualifying misconduct identified in section (4) of this rule that occurred after January 15, 2008;

(b) Convictions that occurred seven years or more prior to the date of review may be appropriate for summary staff disposition or administrative closure.

(6) Initial Minimum Periods of Ineligibility.

(a) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct identified in section (4), the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to seven years.

(b) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.

(c) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(d) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(e) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.

(7) Denial and Revocation Procedure.

(a) Agency Initiated Review: When an agency utilizing a fire service professional or instructor requests that their certification be revoked or denied, the agency must submit the reason for the requested revocation or denial to the Department, in writing, including all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet established Oregon fire service standards, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements, but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in section (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.

(E) In misconduct cases where there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (f) of this rule, based on discretionary disqualifying misconduct, the Fire Policy Committee and Board may consider mitigating and aggravating circumstances including, but not limited to the following:

(A) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison or jail and the length of incarceration;

(C) Whether restitution was ordered and if the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date the parole or probation period expired or will expire;

(E) Whether the fire service professional or instructor has more than one conviction and over what period of time;

(F) Whether the misconduct involved domestic violence;

(G) Whether the fire service professional or instructor self-reported the misconduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession; and

(L) What the fire service professional's or instructor's physical or emotional condition was at the time of the conduct.

(e) Scope of Revocation. When the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

(f) Initiation of Proceedings: Upon determination by the policy committee that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the fire service professional or instructor.

(g) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the fire service professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(h) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(i) Default Orders:

(A) If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0672.

(B) If a timely request for a hearing is not received in cases heard by a policy committee, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(j) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(k) Proposed and Final Orders:

(A) In cases where a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provision of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(l) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

(8) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(9) Reapplication Process and Eligibility Determinations.

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in section (6) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (6) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until the maximum initial period of ineligibility identified in (6) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the fire service professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

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

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 1-2011, f. 2-24-11, cert. ef. 4-1-11; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 7-2013, f. & cert. ef. 3-26-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 4-2014, f. & cert. ef. 1-28-14; DPSST 20-2014, f. & cert. ef. 7-30-14; DPSST 21-2014(Temp), f. & cert. ef. 7-31-14 thru 1-27-14; DPSST 30-2014, f. & cert. ef. 10-22-14; DPSST 37-2014, f. & cert. ef. 12-31-14

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Rule Caption: To clarify that DPSST certifies police officers for the purposes of ORS 813.131(2).

Adm. Order No.: DPSST 1-2015

Filed with Sec. of State: 1-5-2015

Certified to be Effective: 1-5-15

Notice Publication Date: 12-1-2014

Rules Amended: 259-008-0060

Rules Repealed: 259-008-0060(T)

Subject: ORS 813.131(2), which is the statute governing implied consent, prohibits police officers from requesting a urine test in cases of suspected impaired driving unless the officer is "... certified by the Board on Public Safety Standards and Training as having completed at least eight hours of training in recognition of drug impaired driving ..." [ORS 813.131(2)].

Recently, DPSST was contacted by the Department of Motor Vehicles (DMV) with concerns about the inconsistency of the statute requiring that officers be certified by the Board on Public Safety

Standards and Training (Board) and the DPSST's Oregon Administrative Rules (OAR) that state that the Department of Public Safety Standards and Training (DPSST) certifies police officers who have met the minimum standards for certification prescribed by the Board. Because ORS 813.131(2) requires that an officer be certified by the Board, evidence that the officer was certified by DPSST may not be sufficient for the statute.

DPSST filed a temporary rule on October 8th, 2014, adding language to our rule clarifying that DPSST certifies police officers for the purposes of ORS 813.131(2). This rule change completes the permanent rule filing and repeals the temporary rule.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-008-0060
Public Safety Officer Certification

(1)(a) Basic, Intermediate, Advanced, Supervisory, Management, and Executive Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(b) The Department of Public Safety Standards and Training certifies police officers for the purposes of ORS 813.131(2).

(2) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training:

(a) Basic courses certified by the Department shall be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave. A public safety officer may submit a written request for credit for military time served upon return from his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served;

(C) From the date a public safety officer's certification is suspended until it is reinstated by the Department; or

(D) When a public safety officer fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety officer.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(14) Effective November 1, 2012:

(a) Applicants for an Intermediate Certificate in police, corrections or parole and probation must have acquired the combinations of education hours and training hours combined with the prescribed years of experience, or college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Intermediate Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years experience must be full-time employment within the discipline for which Intermediate certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Intermediate certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Intermediate level. The signature of the agency head or designee on an F-7 Application for Certification at the Intermediate level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(15) Applicants for Intermediate certification may apply by satisfying the requirements described in subsection (13) or the requirements described in subsection (14) through October 31, 2015.

(16) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education and training hours combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(17) Effective November 1, 2012:

(a) Applicants for an Advanced Certificate in police, corrections or parole and probation must have acquired the following combinations of education and training hours combined with the prescribed years of experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Advanced Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years of experience must be full-time employment within the discipline for which Advanced certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Advanced certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Advanced level. The signature of the agency head or designee on an F-7 Application for Certification at the Advanced level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(18) Applicants for Advanced certification may apply by satisfying the requirements described in subsection (16) or the requirements described in subsection (17) through October 31, 2015.

(19) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(20) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as a Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(21) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(22) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined

in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four (4) hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181.662(c) and these rules. A copy of the Notice will be sent to the officer's employing agency.

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(j) A law enforcement officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(k) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(l) Failure to complete the required maintenance training may not result in a suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(23) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11; DPSST 23-2012, f. 10-25-12, cert. ef. 11-1-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 12-2014, f. & cert. ef. 6-24-14; DPSST 28-2014(Temp), f. & cert. ef. 10-8-14 thru 4-6-15; DPSST 1-2015, f. & cert. ef. 1-5-15

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Rule Caption: To clarify continuing education guidelines and housekeeping.

Adm. Order No.: DPSST 2-2015

Filed with Sec. of State: 1-5-2015

Certified to be Effective: 1-5-15

Notice Publication Date: 12-1-2014

Rules Amended: 259-061-0005, 259-061-0240

Rules Repealed: 259-061-0260

Subject: Private Investigators are required to submit a DPSST Form PI-6 to prove compliance with continuing education requirements listed in Oregon Administrative Rules (OAR.) Constituents have expressed confusion regarding the many continuing education categories in rule and how to determine which category applies to their continuing education endeavors. Further, many of the continuing education categories in OAR contain outdated references. This rule change combines all the continuing education guidelines under OAR 259-061-0240 and updates the continuing education categories. Further, it repeals OAR 259-061-0260. Finally, the definition of "Continuing Education" in OAR 259-061-0005 has been revised and housekeeping has been performed for clarity and consistency.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-061-0005
Definitions

(1) "Administrative Termination" means the Department has stopped the processing of an application due to non-response from applicant or non-compliance with the application requirements or the requirements of these rules."

(2) "Board" means Board on Public Safety Standards and Training.

(3) "Complainant" means any person or group of persons who file(s) a complaint. The Department may, on its own action, initiate a complaint.

(4) "Complaint" means a specific charge filed with the Department that a licensed investigator or candidate thereto, or any person apparently operating as an investigator without a license, has committed an act in violation of ORS Chapter 703 or OAR chapter 259.

(5) "Committee" means the Private Security and Investigator Policy Committee.

(6) "Continuing Education" means any educational endeavor that reasonably could be considered beneficial to the work of the investigator.

(7) "Department" means the Department of Public Safety Standards and Training.

(8) "Disciplinary Procedure" means all action up to the final resolution of a complaint after the issuance of a "Notice of Intent."

(9) "Educational endeavor that reasonably could be beneficial to the work of the investigator" as used in ORS 703.447(4) means those educational endeavors that are in compliance with the Department's Continuing Education Guidelines, or are approved by the Private Security and Investigator Policy Committee.

(10) "Employee," as used in ORS 703.401 to 703.490, means a person who is employed lawfully by an employer. The employer controls the performance of that person; pays the salary, unemployment insurance, and worker's compensation insurance; and has sole authority to fire and control work hours and the conditions of work. "Employee" in this context does not include a person engaged as an independent contractor.

(11) "Expired license": A license is considered expired on the date of expiration. A person may not practice as an investigator with an expired license.

(12) "Hours of experience" means documented clock hours.

(13) "Investigatory work" means any work performed in accordance with ORS 703.401(2).

(14) "Licensee" or "Licensed Investigator", as used in OAR 259-061-0005 through 259-061-0300 means a person licensed as an investigator under ORS 703.430.

(15) "Private investigator" is a licensed investigator who has completed a minimum of 1500 documented clock hours of investigatory work experience or an approved course of study or a combination of work and study as approved by the Department.

(16) "Provisional investigator" is a licensed investigator who has completed fewer than 1500 documented clock hours of investigatory work experience, or an approved course of study, or a combination of work and study as approved by the Department; and who may not employ or supervise other investigators. Under 1997 and 1999 editions of governing statute, this type of investigator was referred to as a "Registered Operative."

(17) "Respondent" means an investigator who is a licensee or candidate for licensure, or any person apparently operating as an investigator without a license, against whom a complaint has been filed.

(18) "Stipulated Agreement" means a written agreement entered into between the Department and a respondent.

(19) "Violation" means a violation of Oregon Revised Statutes or Oregon Administrative Rules as they pertain to the licensing requirements of investigators in the state of Oregon.

Stat. Auth.: ORS 703.401 & 703.480
Stats. Implemented: ORS 703.401 & 703.480
Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 2-2015, f. & cert. ef. 1-5-15

259-061-0240
Continuing Education Requirements

(1) A licensed Private Investigator must complete and report 32 hours of continuing education. Two of the hours must be in ethics.

(2) A licensed Provisional Investigator must complete and report 40 hours of continuing education. Two of the hours must be in ethics.

(3) Except as listed in (a)(ix) below, A licensed investigator may carry over up to 15 hours of unused continuing education to his or her next licensing period. "Continuing Education" as defined in OAR 259-061-0005(6), includes, but is not limited to:

(a) Books and manuals: Two hours of continuing education will be granted for each non-fiction book or professional/technical manual read, with a limit of six continuing education hours per licensing period. Books will be approved on a case-by-case basis;

(b) College, internet or correspondence courses;

(c) Conferences, seminars and interactive webinars;

(d) Pre-recorded or non-interactive media: Limited to 24 continuing education hours per licensing period.

(e) Department/Board/Committee Meetings: One hour of continuing education will be granted for each hour in attendance of a Board or Committee Meeting, with a limit of eight continuing education hours per licensing period;

(f) Lectures and public presentations: One hour of continuing education will be granted for each hour of presenting or attending a lecture or public presentation, with a limit of eight hours of continuing education per licensing period;

(g) Mentoring: One hour of continuing education per eight hours of training will be granted to licensed investigators who provide training to another investigator, with a limit of eight continuing educational hours per licensing period;

(h) Network meetings: One hour of continuing education will be granted for each network meeting attended, with a limit of eight continuing education hours per licensing period;

(i) Publications: Continuing education hours will be granted to individuals who have authored or co-authored publications. Continuing education hours awarded for publications will be at the Department's discretion, with a limit of 10 continuing education hours per licensing period, with no carry over.

(j) Any other continuing education that reasonably could be considered beneficial to the work of the investigator. The Department reserves the right to approve or disapprove any continuing education request.

(4) License renewal. An investigator must provide proof of completed continuing education by completing a Form PI-6 (Continuing Education Summary), upon application of license renewal.

(5) Licensed Investigators must retain documentation of proof of continuing education for four years.

(6) At the Department's discretion, the Department may audit continuing education documents to ensure compliance with this rule.

Stat. Auth.: ORS 703.430, 703.447 & 703.480
Stats. Implemented: ORS 703.447
Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 2-2015, f. & cert. ef. 1-5-15

Rule Caption: Amends definition of "Temporary Work Permit" and other definitions; changes private security executive manager responsibilities.
Adm. Order No.: DPSST 3-2015
Filed with Sec. of State: 1-5-2015
Certified to be Effective: 1-5-15
Notice Publication Date: 12-1-2014
Rules Amended: 259-060-0010, 259-060-0130
Subject: On February 18, 2014, DPSST presented a proposed rule change to the Private Security and Investigator Policy Committee (PSIPC) amending the definition of "Temporary Work Permit." On April 29, 2014, the amended language was filed with the Secretary of State's Office as a proposed rule. On June 6, 2014, a public comment was received.

After reviewing the public comment, DPSST staff recommended leaving the proposed language regarding temporary work permits in OAR 259-060-0010 as previously amended. However, to address the public comment concerns, staff recommended changing the private security executive manager responsibilities in 259-060-0130 to include that an executive manager is considered an employing licensed manager when contracting with businesses or entities. Further, staff also recommended clarifying the definitions of private security professional and supervisory manager to exclude them from contracting with businesses or entities while providing services as private security professionals or supervisory managers. The PSIPC met and discussed the public comment, the staff recommendation, and the proposed amendments to 259-060-0010 and 259-060-0130. The PSIPC recommended approving the amended language to the Board and the Board affirmed the PSIPC's recommendation.

On October 30, 2014, the amended language was filed with the Secretary of State's Office as a proposed rule. No further comments were received. This rule change completes the permanent filing process.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-060-0010
Definitions

(1) "Accreditation Program Manager" means a person who is designated as the administrator of an employer accredited training program and is primary liaison with the Department.

(2) "Alarm Monitor" means an individual whose primary duties are the processing of alarms in an alarm monitoring facility.

(3) "Alarm Monitoring Facility" mean any organization, contract or proprietary, with the primary responsibility of reviewing incoming traffic transmitted to alarm receiving equipment and follows up with actions that may include notification of public agencies to address imminent threats related to public safety. This does not include:

(a) Facilities that monitor only production or environmental signals not directly impacting public safety;

(b) Proprietary alarm systems being monitored by Department-certified private security professionals that generate an internal response by another Department-certified private security professional;

(c) Facilities that monitor Personal Emergency Response Systems (PERS) only; or

(d) Facilities utilizing alarms that never generate a response from a public safety agency.

(4) "Applicant" means an individual who is applying for or renewing certification or licensure as a private security provider.

(5) "Armed Private Security Professional" means a private security professional who is certified to possess or has access to a firearm at any time while performing private security services.

(6) "Assessment module" means a Department-approved curriculum given to private security providers that includes, but is not limited to, the demonstration of task-related skills learned in the classroom instruction as applied to hypothetical situations.

(7) "Board" means the Board on Public Safety Standards and Training.

(8) "Certification" means recognition by the Department that a private security professional meets all the qualifications listed in ORS 181.875 and these rules.

(9) "Consideration" means something of value promised, given or done that has the effect of making an agreement to provide private security services.

(10) "De Minimis" means non-monetary compensation received by a volunteer performing private security services for a non-profit organization as defined in ORS 181.871. The compensation may not exceed a fair market value of $125 per day.

(11) "Denial" or "Deny" means the Department's refusal to grant private security certification or issue a license to an applicant who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in 259-060-0300.

(12) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

(13) "Director" means the Director of the Department of Public Safety Standards and Training.

(14) "Employer" means an individual or entity who employs persons to provide private security services.

(15) "Executive Manager" means a person:

(a) Who is authorized to act on behalf of a company or business in matters of licensure and certification;

(b) Who is authorized to hire and terminate personnel;

(c) Whose primary responsibility is the management of certified private security professionals; and

(d) Who has final responsibility for a company's or business's compliance with the ORS 181.870 to 181.991.

(16) "Flagrant Violation" means an act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues or repeats the violation within a 36 month period after the initial violation.

(17) "Fundamental" means a duty that is a basic task or function and may be low frequency, but is an essential component of a job.

(18) "Instructor" means any person who has been certified by the Department as meeting the requirements to provide instruction to private security providers or applicants.

(19) "License" means recognition by the Department that executive manager or supervisory manager meets the requirements listed in ORS 181.875 and these rules.

(20) "Policy Committee" means the Private Security and Investigator Policy Committee.

(21) "Primary Responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(22) "Private" as used in the Act means those activities intended for or restricted to the use of a particular person, group or interest, or belonging to or concerning an individual person, company or interest.

(23) "Private Security Professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services. A private security professional is not authorized to independently contract with businesses or entities to provide services as a private security professional.

(24) "Private Security Provider" means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(25) "Private Security Services" means the performance of at least one of the following activities:

(a) Observing and reporting unlawful activity;

(b) Preventing or detecting theft or misappropriation of any goods, money or other items of value;

(c) Protecting individuals or property, including, but not limited to proprietary information, from harm or misappropriation;

(d) Controlling access to premises being protected or, with respect to a licensee of the Oregon Liquor Control Commission, controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited;

(e) Securely moving prisoners;

(f) Taking enforcement action by detaining persons or placing persons under arrest under ORS 133.225; or

(g) Providing canine services for guarding premises or for the detection of unlawful devices or substances.

(26) "Private Security Services Providers Act" or "The Act" means the Private Security Providers Act (ORS Chapter 181.870 through 181.991).

(27) "Revocation" or "Revoke" means action taken by the Department to rescind the certification or licensure of a private security provider who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in 259-060-0300.

(28) "Supervisory Manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals. A supervisory manager is not authorized to independently contract with businesses or entities to provide services as a supervisory manager.

(29) "Surrender" means the voluntary relinquishment of private security certification or licensure to the Department.

(30) "Suspension" or "Suspend" means action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes the individual to provide private security services.

(31) "Temporary Work Permit" means a temporary certification or licensure issued by an employing, licensed manager to allow a company to employ and deploy a private security professional, executive or supervisory manager while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed security professionals.

(32) "Unarmed Private Security Professional" means a private security professional who is not in possession of, or has access to, a firearm at any time while performing private security services.

(33) "Violation" means an act or omission that is prohibited under the Act or these rules.

(34) "Withdraw" means action taken by the applicant or private security provider to remove an application from consideration.

Stat. Auth.: ORS 181.870 & 181.878

Stats. Implemented: ORS 181.870 & 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 11-2007, f. & cert. ef. 10-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 28-2012, f. & cert. ef. 12-24-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 3-2015, f & cert. ef. 1-5-15

259-060-0130

Private Security Executive Manager and Supervisory Manager Licensure and Responsibilities

(1) All private security executive or supervisory manager applicants must complete an application in accordance with OAR 259-060-0025.

(2) All private security executive or supervisory manager applicants must be in compliance with the minimum standards for licensure as listed in OAR 259-060-0020.

(3) Private security executive managers are responsible for ensuring compliance of all private security providers employed by businesses or entities by which the executive manager is employed or contracted. An executive manager is authorized to perform the duties defined in OAR 259-060-0010.

(4) Private security supervisory managers have the responsibility and authority of supervising persons providing security services. A supervisory manager is authorized to perform the duties defined in OAR 259-060-0010.

(5) Basic training for executive and supervisory private security managers consists of successful completion of the following:

(a) Eight-hour basic classroom instruction and exam; and

(b) Manager course, exam and assessment module.

(6) Biennial renewal training consists of the manager course, exam and assessment module.

(7) Each business, employer or entity with private security professional staff of at least one person must designate an individual to perform the duties of an executive manager as described in these rules. This provision applies to any business, employer or entity that provides private security services within this state, regardless of whether the business, employer or entity is located in or out of this state.

(a) An employer may obtain licensure for more than one executive manager.

(b) In the event of a staff change of executive managers or supervisory managers, the company or entity must select a replacement manager and immediately notify the Department of the staff change on the Form PS-23

(Change of Information.)

(8) Employing, licensed managers may issue temporary work permits to private security applicants upon verification that all application requirements have been completed.

(9) An executive manager is authorized to contract with businesses or entities to provide services as an executive manager.

(a) An executive manager is required to notify the Department in writing of the names, addresses and contact information of each business or entity with which they contract within two days of beginning the contract.

(b) An executive manager must notify the Department within two days of the termination or completion of a contract with a business or entity.

(c) For the purposes of this rule, an executive manager who contracts with businesses or entities to provide services as an executive manager is considered an employing, licensed manager.

(10) A licensed manager who performs private security services must complete the full training required for that classification and be certified.

(11) Failure to complete any training requirements as prescribed by this rule may result in denial or revocation of private security certification or licensure as prescribed in OAR 259-060-0300 and civil penalties as prescribed in 259-060-0450.

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

Stat. Auth.: ORS 181.878

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 6-2008, f. & cert. ef. 4-15-08; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 3-2015, f & cert. ef. 1-5-15

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Rule Caption: To add individuals utilized as volunteers to the fire service background investigation rule.
Adm. Order No.: DPSST 4-2015(Temp)
Filed with Sec. of State: 1-15-2015
Certified to be Effective: 1-15-15 thru 7-13-15
Notice Publication Date:
Rules Amended: 259-009-0015
Subject: The background investigation rule for fire service professionals filed permanently on December 29, 2014, failed to extend the background investigation requirement to agencies considering individuals who would be utilized as volunteers. The clear intent of the Background Investigation Workgroup was to include all fire service professionals, whether they are career or volunteer. DPSST is filing a temporary rule to add individuals who are utilized as volunteers to the background investigation rule language. This will eliminate any confusion amongst fire service constituents while the permanent rulemaking process is underway.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-009-0015
Background Investigation

(1) A background investigation must be conducted by a fire service agency on each individual being considered for employment or utilization as a fire service professional to determine if applicant is of good character.

(a) The background investigation must include, but is not limited to, investigation into the following:

(A) Criminal history and arrests;

(B) Department of Motor Vehicles (DMV) records;

(C) Drug and alcohol use;

(D) Education verification;

(E) Employment history;

(F) Military history verification;

(G) Personal and professional references. Personal and professional references may include, but are not limited to, friends, associates, family members, and neighbors;

(H) Personal Interview. The personal interview may occur before or after the investigation and may be used to clarify discrepancies in the investigation;

(I) Records checks, which may include, but are not limited to:

(i) Police records, district attorney, court and Oregon Judicial Information Network (OJIN) records;

(ii) Open sources or social media, as permitted by law;

(iii) Financial information, as permitted by law; and

(iv) Department of Public Safety Standards and Training Professional Standards records.

(J) Residential history; and

(K) Work eligibility.

(b) Each individual being considered for employment or utilization as a fire service professional must provide a notarized personal history statement. The statement must include, but is not limited to:

(A) Verification of the background information referred to in section (1)(a);

(B) A complete list of all fire service agencies an individual has applied with; and

(C) A signed release allowing background investigation information to be shared with other public or private safety agencies in which the applicant may become affiliated with.

(2) Results of the background investigation on all fire service professionals must be retained by the fire service agency in accordance with the Secretary of State's Record Retention Schedule and must be available for review at any reasonable time by the Department.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: DPSST 31-2014, f. & cert. ef. 12-29-14; DPSST 4-2015(Temp), f. & cert. ef. 1-15-15 thru 7-13-15

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Department of Revenue
Chapter 150

Rule Caption: Define "last known address" for purposes of mailing notices to taxpayers.
Adm. Order No.: REV 5-2014
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 150-305.265(11)
Subject: 150-305.265(11) — Clarifies what constitutes a "last known address" for the purpose of mailing notices to taxpayers. Removes IRS information as a source of the last known address. Implements 2013 SB 183, delivery of notices by electronic means.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.265(11)
Last Known Address

(1) Notices of Deficiency and Notices of Assessment are required to be mailed to the last-known address or via other means as agreed upon by the taxpayer. Pursuant to ORS 305.127, the department may provide notice to a person by means other than regular mail if a notification agreement exists between the department and the person affirmatively indicates that the department may use means other than regular mail for any required notice to the person.

(2) The department will use the address on the most recently filed return as the last-known address unless the taxpayer has notified the department in writing, electronically, or through a documented phone call that this address is incorrect.

(a) "In writing" means a letter written to the department, a completed Form 150-800-738 Change of Address/Name, or a completed Form 150-211-156 Oregon Combined Payroll Tax Business Change in Status submitted to the department by the taxpayer or the taxpayer's authorized representative.

(b) "Electronically" means a taxpayer provides the department with a new address or other contact information via their online taxpayer account.

(c) "Documented phone call" means a call that is noted or described in a contemporaneous record of the substance of the phone call, made by the taxpayer, the taxpayer's authorized representative or an employee of the department and must include the date and time of the call and the names of the parties involved in the conversation.

(3) When the department receives information indicating that the last-known address is incorrect or outdated, the department may use the following methods to determine the last-known address:

(a) An Address Information Request, which is a letter sent to the United States Postal Service by the Department of Revenue requesting verification of the taxpayer's address.

(b) Address information received from the United States Postal Service or from a service using an address-updating method approved by the United States Postal Service.

(c) Address information received from other third-parties, except that other third party information will be accepted only after contact is made with the taxpayer and the taxpayer has verified that the address is a permanent address.

Example 1: The department sends a letter to X Company to obtain employment information regarding Alice, a taxpayer that is employed by X Company. When X Company responds, they indicate a new address for Alice. The department must contact Alice to verify that the new address is correct before Alice's last-known address is changed.

(4) If a taxpayer has never filed an income tax return with the department, or if the most recently filed income tax return was filed more than two years prior to the date the notice is mailed, the department may, in addition to those procedures described in section (3) of this rule, use address information received from another government agency to determine last-known address. That agency must follow strict policies regarding address verification, such as:

(a) Address documentation must be in writing and be signed by the taxpayer.

(b) The agency must use at least one method from section (3) of this rule to verify address changes.

Example 2: Tom has not filed income tax returns with Oregon for the last two years. He holds a business license regulated by a governmental agency that meets the criteria above. The department may use an address provided by the other agency as Tom's last-known address. The department may send notices of deficiency and notices of assessment to Tom at this address.

(5) If a clear typographical error has been made on the taxpayer's most recently filed return, the department may take the following actions:

(a) If the address on the return is the same address on the taxpayer's account except for a typographical error, the department will revert back to the current account address. A change in street number or apartment number is not to be considered a typographical error.

Example 3: Carl's account is 1234 Main Street, Salem, OR 97301, but the return indicates 1234 Main Street, Salem, OR 97301. The department will retain the current account address.

(b) If the address on the return is wholly different than the address on the taxpayer's account, which includes a typographical error, the department will use the procedures described in sections (3) and (4) of this rule to determine a taxpayer's last-known address.

Example 4: Linda's account shows an address of 1234 Main Street, Salem, OR 97301, but Linda's return has an address of 5678 1st Street, Salem, OR 97301, the department will first attempt to contact Linda before attempting other methods of verification.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2014, f. 12-23-14, cert. ef. 1-1-15

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Rule Caption: Corporation income/excise tax: Estimated Tax: Application of payments; Long Term Enterprise Zone distributions.
Adm. Order No.: REV 6-2014
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Adopted: 150-317.131
Rules Amended: 150-314.515(2)
Subject: 150-314.515(2) provides a method to determine the application of a corporate refund application and clarifies the date an amended return is posted.

150-317.131 provides guidance regarding how the department handles long-term enterprise zone distributions after a change in underlying corporate tax liability; also provides a procedure regarding how the department may recover erroneous distributions.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-314.515(2)
Estimated Tax: Application of Payments

(1) Overpayments of tax

(a) Election. When a corporation files its completed excise or income tax return and the tax shown due thereon is less than the amounts previously paid for that year, the corporation may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the corporation excise tax return or corporation income tax return.

(b) Application to estimated tax installment. The department will apply the elected amount to the estimated tax installment that next becomes due on or after the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later. The amount will be credited to the estimated tax installment as of the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed.

(c) Short-year returns — application to estimated tax installment. If a taxpayer files a tax return for a period of less than twelve months and that return requests an overpayment of tax be applied to an installment of estimated tax, the department will credit the overpayment of tax to the estimated tax installment as explained in subsection (1)(b) of this rule unless the taxpayer requests that the department apply the amount to the estimated tax installment due immediately following the installment that next becomes due.

Example: Corporation Zee is a fiscal year taxpayer that changed its accounting period to a calendar year. Zee's short year return is a four-month return. Zee files its short year return on November 15th (the due date of the short year return). Zee requests its overpayment of tax be applied to estimated tax. As explained in subsection (1)(b) of this rule, the department will credit the amount to the installment of estimated tax due December 15th. Alternatively, Zee could request that the department instead credit the amount to the first installment for the following tax period; April 15th, the first estimated tax installment due date for calendar year filers.

(2) Payments of estimated tax. The department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax payments to any prior underpayment and the remainder, if any, will be applied to the next required installment.

Example: Corporation A is a calendar year taxpayer. A's return is filed timely on April 15, 2014. Its 2013 tax after credits is $12,000. The corporation must make the following estimated tax payments on or before the indicated dates to avoid having an underpayment of estimated tax:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $3,000.
Dec. 15, 2013 — $3,000.
Corporation A pays as follows:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $0.
Sept. 30, 2013 — $3,500.
Dec. 15, 2013 — $0.
The $3,500 payment will be credited as of September 30, 2013. Of the $3,500 payment, $3,000 is applied to the payment due September 15, 2013. The $500 remainder is applied to the payment due December 15, 2013.
[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.515
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 6-2014, f. 12-23-14, cert. ef. 1-1-15

150-317.131
Long Term Enterprise Zone Distributions

(1) Distributions from the Long Term Enterprise Zone Fund to local taxing districts under ORS 317.131 include only corporate tax liability payments received prior to the department's calculation of the distribution for the year.

(2) Any reduction of corporate tax liability of a taxpayer for a tax year, which is recognized and accepted subsequent to the deposit of that taxpayer's tax payments for the tax year into the Fund, will not be considered when determining the amount of the distribution to local taxing districts.

(3) If the department errs when calculating the correct amount of a distribution, the department may adjust the erroneous distribution and may require the return of any erroneously distributed payments made to local taxing districts.

(4) If the department requires the return of erroneously distributed payments made to local taxing districts; the department shall, if practicable, subtract the amount of the erroneously distributed payment to the local taxing district from the next distribution to the local taxing district. Otherwise, the department shall bill the local taxing district for any amount of an erroneously distributed payment that the department is unable to recover from the local taxing district by subtracting funds from the next distribution to the local taxing district.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.131
Hist.: REV 6-2014, f. 12-23-14, cert. ef. 1-1-15

Rule Caption: Property Tax: Schools, Urban Renewal, Continuing Education, Deferral, Adjudicated Values, Applications, Exemptions
Adm. Order No.: REV 7-2014
Filed with Sec. of State: 12-23-2014
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Rules Adopted: 150-307.145, 150-457.440(9)-(B)
Rules Amended: 150-306.265, 150-308.057, 150-308.059-(A), 150-308.149(6), 150-311.672(1)(a)
Rules Repealed: 150-307.130-(B)
Rules Renumbered: 150-294.311(30) to 150-294.311(31)
Rules Ren. & Amend: 150-309.115(2)(b) to 150-309.115(2), 150-311.670(1) to 150-311.670(1)(a)
Subject: 150-294.311(30) to 150-294.311(31) aligns the rule number with the current numbering in the statue.

150-306.265 enables county assessors to accept other electronic exemption and special assessment applications.

150-307.130-(B) content of this rule is covered in OAR 150-311.216

150-307.145 provides guidance to taxpayers and county assessor staff regarding what constitutes a "school" or "academy" that qualifies for property tax exemption under the statute.

150-308.057 prescribes continuing education requirements for county assessors.

150-308.059-(A) sets continuing education requirements for non-appraisal managers.

150-308.149(6) prescribes procedures for calculating the minor construction thresholds.

150-309.115(2)(b) to 150-309.115(2) clarifies the procedure to adjust an adjudicated value.

150-311.670(1) to 150.311670(1)(a) clarifies what constitutes being away from the home "by reason of health" for Property Tax Deferral Programs.

150-311.672(1)(a) outlines the required supplemental information that the county assessor includes with the Property Tax Deferral Application prior to forwarding the application to the Department of Revenue.

150-457.440(9)-(B) provides direction for calculating urban renewal division of tax rates derived from city taxes when the city's taxes are being phased-in.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-294.311(31)
Definition of Organizational Unit

As used in ORS 294.305 to 294.565, an organizational unit is an administrative subdivision of a municipal corporation accountable for specific services, functions, or activities.

Example 1: Cities may allocate expenditures within the general fund to organizational units such as: City Recorder, Police Department, Fire Department, Library, etc.
Example 2: Counties may allocate expenditures within the general fund to organizational units such as: Assessor's Office, Treasurer's Office, Clerk's Office, Health Department, etc.
Example 3: For municipalities other than cities or counties, the governing body may identify organizational units within the general fund by the responsibilities assigned, e.g., General Administration, Plant Maintenance, etc.
Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.311
Hist.: 12-1-77, Renumbered from 150-294.311(19); TC 18-1979, f. 12-20-79, cert. ef. 12-31-79, REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from 150-294.311(23); Renumbered from 150-294.311(26) by REV 6-2003, f. & cert. ef. 12-31-03; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04; Renumbered from 150-294.311(30) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-306.265
Application Filing by Telephonic Facsimile (FAX)

Application Filing by Electronic Means

The Department of Revenue or any county may accept any application for property tax exemption or special assessment by telephonic facsimile (FAX) or other electronic means according to the policies and procedures of the receiving agency.

Stat. Auth.: ORS 305.100 & 306.265
Stats. Implemented: ORS 306.265
Hist.: REV 10-2002, f. & cert. ef. 12-31-02; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-307.145
Definition of Schools and Academies

(1) "Schools" and "academies" mean educational institutions that:

(a) Offer education in kindergarten or grades 1 through 12, or any combination of those grade levels; or are post-secondary colleges or universities; and

(b) Provide a comprehensive instructional program that is not limited to dance, drama, music, religious or athletic instruction, or other special art or technical skill.

Example 1: An incorporated, charitable nonprofit organization that promotes the arts in its community offers several weekly dance classes at its Arts Center. The organization would not qualify for exemption as a "school" or "academy" under ORS 307.145 because it does not offer a comprehensive instructional program. Failure to qualify for exemption under 307.145 does not preclude exemption under another statute if the property qualifies for exemption under that statute.
Example 2: An incorporated charitable school focuses on teaching children about a foreign culture through a foreign language immersion program where children spend the school day speaking and hearing a foreign language as they learn about literature, mathematics, science, language, and social studies. The school would qualify for exemption under ORS 307.145 because it provides a comprehensive instructional program.

(2) Schools or academies focusing primarily on providing on-the-job training do not qualify.

(3) To qualify for exemption under ORS 307.145, a pre-school or pre-kindergarten must qualify as a "child care facility" as defined in 307.145(3)(a).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.145
Hist.: REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.057
Continuing Education Requirements for Assessors

(1) Assessors and directors of assessment and taxation must have 15 credits of technical training, 15 credits of management training and 15 credits which they can allocate in any combination of technical or management credits for a total of 45 credits every two years. Newly appointed or elected assessors must complete 20 credits of technical training, 20 credits of management training and 20 credits which they can allocate in any combination of technical or management credits for a total of 60 credits within the first two calendar years following their appointment or election.

(a) Technical training must be in the area of assessment and taxation such as appraisal, budgets, ratio studies, and tax rate computation. A minimum of 15 credits of technical training must be completed every two years. Assessors and directors of assessment and taxation must complete a course in Basic Mass Appraisal.

(b) Management training must be in the area of personnel relations (hiring, discipline, dismissals) office management and management of an appraisal program. A minimum of 15 credits of management training must be taken every two years.

(2) Completion of the continuing education requirements under this rule for assessors and directors of assessment and taxation shall be considered to meet the continuing education requirements of ORS 308.010(4)(a).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.057
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-308.057-(A); REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.059-(A)
Continuing Education Requirement for Appraisal Managers in County Assessment Offices

(1) Appraisal managers means employees classified in the county's management personnel category who supervise appraisal staff. Appraisal managers must be registered appraisers under ORS 308.010.

(2) Appraisal managers must meet the same continuing education requirements as assessors under OAR 150-308.057.

(3) Completion of the continuing education requirements under this rule for appraisal managers shall be considered to meet the continuing education requirements of ORS 308.010(4)(a).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.059
Hist.: Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-308.059; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93); REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.149(6)
Minor Construction

(1) Definition: "Minor construction" is an improvement to real property that results in an addition to real market value (RMV), but does not

qualify as an addition to maximum assessed value (MAV) due to a value threshold. The value threshold is an RMV of over $10,000 in any one assessment year, or over $25,000 for all cumulative additions made over five assessment years.

(2) Minor construction does not include general ongoing maintenance and repairs.

(3) When testing the over $25,000 threshold, use the cumulative RMV of all minor and major construction over a period not to exceed five consecutive assessment years.

(a) Minor and major construction values are not market trended.

(b) Values for retirements are not considered in the threshold test.

(c) Values for minor construction items that are removed or destroyed prior to being an adjustment to MAV are subtracted from the minor construction cumulative RMV.

(4) Once the over $25,000 threshold is met, use the following steps to calculate the MAV adjustment:

(a) Use minor construction values that are not market trended.

(b) Make adjustments for any retirements from the prior assessment year. The net value of additions and retirements may not go below zero.

(c) Apply the changed property ratio (CPR) from the year the cumulative RMV becomes an addition to MAV.

(d) Reset the cumulative RMV for minor construction to zero and restart the 5-year period. The following examples demonstrate the over $25,000 threshold. RMVs in the following examples are not market trended and/or depreciated.

Example 1: Over $25,000 Not Met. [Example not included. See ED. NOTE.]

Example 2: Over $25,000 Not Met, Prior Years Drop Off. [Example not included. See ED. NOTE.]

Example 3: Cumulative RMV Reset. [Example not included. See ED. NOTE.]

Example 4: Cumulative RMV Reset. [Example not included. See ED. NOTE.]

Example 5: Individual Year and Cumulative Year Adjustments. [Example not included. See ED. NOTE.]

Example 6: Removal of Destroyed Minor Construction. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.149

Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-309.115(2)
Trending and Indexing an Adjudicated Value

(1) "Adjudicated value" means a real market value that has been corrected by a final order of the Department of Revenue, the board of property tax appeals, the tax court or other court, and is adjusted only as allowed under ORS 309.115 for the subsequent five tax years.

(2) A single trend or index applied to all properties of a certain class in a market area shall be applied in the same manner to adjudicated values in the same property class and market area. For purposes of this rule, a market area may be identified to exist within a county or include properties in multiple counties. This section applies, but is not limited, to ratio studies conducted under ORS 309.200 and economic studies conducted for industrial properties appraised by the Department of Revenue under 306.126.

(3) Assessors may develop valuation models to determine the real market value of property in the same property class and in the same defined market area that rely on applying trending, indexing, and depreciation factors to multiple, identifiable property characteristics on file.

(4) The assessor shall apply the same adjustments to adjudicated values as those applied to values of other properties in the same property class in the same defined market area where valuation modeling for multiple property characteristics is used to calculate real market value.

(5) The adjudicated value in section (4) must be calculated using the method in either subsection (a) or (b) of this section. The methods in subsections (a) and (b) in this section are mathematically equivalent, although differences due to rounding may occur. Such differences are de minimus.

(a) Adjust the prior year's adjudicated value proportionately to the change in value produced by the valuation model.

(A) Calculate the ratio of the real market value produced by the valuation model in the current year to the real market value produced by the valuation model in the prior year.

(B) Apply the ratio in paragraph (A) to the prior year's adjudicated value.

Example 1: Real property is originally listed on the 2013–14 tax roll with an RMV of $100,000. The county board of property tax appeals reduces the RMV to $85,000. The county applies a valuation model, which is recalculated each year, to all like properties in the market area. The table below shows the real market values produced by the valuation model, the ratio to the real market value produced by the valuation model for the prior year to those values, and the result of multiplying the prior year's adjudicated value by the ratio for each tax year. [Table not included. See ED. NOTE.]

(b) Adjust the real market value produced by the valuation model for the current year proportionately to the correction ordered in the first year of adjudication.

(A) Calculate the ratio of the adjudicated value to the real market value produced by the valuation model in the first year of adjudication,

(B) Apply the ratio to the real market value produced by the valuation model for the current year.

Example 2: The facts are the same as for Example 1. The table below shows the real market values produced by the valuation model, the ratio of the adjudicated value to the original real market value produced by the valuation model in the first year of adjudication, and the result of multiplying the real market value produced by the valuation model by the ratio for each tax year. [Table not included. See ED. NOTE.]

(6) Notwithstanding section (5), if the adjudicated value is the result of correcting a specific error in the description of property characteristics used in the valuation model, the real market value produced by the valuation model for the corrected property characteristics is the adjudicated value for the subsequent five years.

Example 3: The Department of Revenue reduces the real market value of a home based on evidence that the square footage is less than the square footage shown on the architectural plans as used by the assessor. The real market value found by the department is based upon a price per square foot used by the assessor in the valuation model multiplied by the corrected square footage. The adjudicated value in subsequent years is the price per square foot determined by that year's valuation model multiplied by the corrected square footage ordered by the department.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.115

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered from 150-309.115(2)(b) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-311.670(1)(a)
Homestead Requirements

(1) For property to qualify for tax deferral under ORS 311.666 to 311.701, the property must be the homestead of the applicant while the property taxes are being deferred. This means all individual or joint applicants must live on the property.

(2) The only exception to section (1) is for situations in which the applicant is required to live away from the homestead by reason of the applicant's health. "By reason of health" means that the applicant needs to be away from the property in order to facilitate or obtain medical care or to provide the applicant's basic life needs. Basic life needs include but are not limited to preparation of meals, personal hygiene, or daily care of oneself.

(3) If the applicant in the deferral program is not living at the homestead for reasons of health, the applicant must provide a letter from a medical provider stating the applicant is unable to provide medical care or basic life needs for himself or herself.

(4) Neither the applicant nor the medical provider is required to give a specific date by which the applicant will return to the homestead.

(5) If the applicant is absent from the homestead by reason of the health of the applicant, the Oregon Department of Revenue will continue paying the property taxes as long as the property remains otherwise eligible or until one of the events under ORS 311.684 occurs.

Example 1: Jack and Jane are co-applicants and have been participants in the Senior Deferral program for five years. During a snowstorm in February, Jack fell and broke a hip. Jack has been sent to a nursing home for physical therapy and rehabilitation. Jane notified the department of the situation through a letter from Jack's doctor. Because Jack and Jane both meet the homestead requirement, the Oregon Department of Revenue will continue to pay the property taxes to the county through the deferral program.

Example 2: Same basic scenario as in Example 1. Jane, Jack's co-applicant, moves closer to the nursing home so she doesn't have so far to travel to visit him. All applicants must either live on the property or meet "by reason of health" requirements. Because Jane does not meet the "by reason of health" exception and does not live on the property, the property will not qualify for the deferral program. Both co-applicants must meet the homestead requirements.

(6) An applicant who is away from the homestead by reason of health may rent or lease the homestead to another individual or individuals. This activity will not affect the payment of the property taxes by the department unless it causes the household income to exceed the maximum income allowed for the year in question.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.670

Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13; Renumbered from 150-311.670(1) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-311.672(1)(a)
Data Requirements for Property Description on Tax Deferral Application

(1) The county assessor's office must complete the property description portion of the deferral application to include:

(a) Information about the current deed as follows:

(A) The document or instrument number;

(B) Year recorded;

(C) Book and page number, if applicable;

(b) Information about the earliest deed showing applicant's ownership as follows:

(A) The document of instrument number;

(B) Year recorded;

(C) Book and page number, if applicable;

(c) Assessor's account number;

(d) Code area; and

(e) A description of the property as follows:

(A) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(B) For a property that is unplatted a description that includes township, range, section and acres;

(C) For a manufactured structure, the model year, make, and home number assigned by the Building Codes Division of the Department of Consumer and Business Services.

(D) Multiunit property information:

(i) Notation if property contains multiple units:

(ii) The percentage of property to be deferred. This is determined by comparing the value of the taxpayer's unit (excluding the land and common areas) with the total value of all the units located on the property.

(iii) The real market values of the taxpayer's homestead. This is determined by comparing the percentage to be deferred with the real market value of the property.

(2) The county assessor must send the department a copy of the recorded deed if requested by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.672
Hist.: f. 10-14-92, ef. 12-31-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-457.440(9)-(B)
Calculation of Urban Renewal with City Rate Phase-in

(1) Applicability: This rule must be used in conjunction with OAR 150-457.440(9) when an urban renewal agency sponsored by a city has certified a request for tax increment financing to the assessor under ORS 457.440 and the city has adopted an annexation ordinance under ORS 222.111 with a rate phase-in provision that is applicable to the city's taxes for the tax year.

(2) When the conditions described in section (1) are present, the assessor must modify the calculations under OAR 150-457.440(9) as follows, or by using a method allowed under section (3):

(a) The division of tax rate derived from the city's taxes must be calculated separately for the area of the city that is subject to rate phase-in and for the area of the city not subject to rate phase-in. This is relevant for determining proper division of tax rates to use by code area under OAR 150-457.440(9) subsection (1)(c) and sections (9), (10), (11), and (12).

(A) Calculate the division of tax rate applicable to the shared property that is not subject to rate phase-in by dividing the total division of tax amount from city taxes by the sum of:

(i) The taxable assessed value of the shared property that is not in the phase-in area, and

(ii) The product of the taxable assessed value of the shared property that is in the phase-in area multiplied by the phase-in percentage.

(B) Calculate the division of tax rate applicable to the shared property that is subject to rate phase-in by multiplying the phase-in percentage by the division of tax rate from paragraph (A) of subsection (2)(a).

(b) Division of tax rates derived from taxes of taxing districts other than the city with rate phase-in remain calculated in accordance with OAR 150-457.440(9) and without modification due to the city tax phase-in.

(3) A county may use a different calculation method if approved by the Department of Revenue, it provides an equivalent phase-in of the division of tax rate derived from the city taxes, and the taxes to be raised for the urban renewal agency and city remain comparable to the calculations under section (2).

Stat. Auth.: ORS 305.100 & 457.470
Stats. Implemented: ORS 457.440
Hist.: REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

Department of State Police, Office of State Fire Marshal
Chapter 837

Rule Caption: Establish State Emergency Response Commission Executive Committee and Emergency Planning Districts
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Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 837-095-0010, 837-095-0020, 837-095-0030, 837-095-0040, 837-095-0050
Subject: These rules designate emergency planning districts as required by the Emergency Planning and Community Right to Know Act (EPCRA) of 1986 (42 U.S.C. Chapter 116, Section 11001 et seq.).
Rules Coordinator: Valerie Abrahamson—(503) 934-8211

837-095-0010
Purpose and Scope

These rules establish emergency planning districts as required by the Emergency Planning and Community Right to Know Act (EPCRA) of 1986 (42 U.S.C. Chapter 116, Section 11001 et seq.). The rules provide guidelines for the establishment of a Local Emergency Planning Committee (LEPC) within each emergency planning district. The rules also establish a State Emergency Response Commission (SERC) Executive Committee.

Stat. Auth.: ORS 476.030(2)
Stats. Implemented: ORS 453.520
Hist.: OSFM 5-2014, f. 12-22-14, cert. ef. 1-1-15

837-095-0020
Definitions

For purposes of Oregon Revised Statutes (ORS) 453.520 only, the following definitions apply:

(1) "Emergency Planning District" means geographic boundaries designated by the State Emergency Response Commission to facilitate preparation and implementation of emergency plans related to hazardous materials incidents.

(2) "Industry" means facilities subject to the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Chapter 11001 et seq.).

(3) "Local Emergency Planning Committee" means a federally mandated, quasi-governmental entity representing local government, emergency response officials, facility owners/operators, environmental and citizen groups and other interested parties.

(4) "State Emergency Response Commission" means the Office of the State Fire Marshal as designated by the Governor pursuant to the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Chapter 11001 et seq.).

(5) "State Emergency Response Commission Executive Committee" means a body established to assist the SERC in carrying out the responsibilities mandated in EPCRA.

Stat. Auth.: ORS 476.030(2)
Stats. Implemented: ORS 453.520
Hist.: OSFM 5-2014, f. 12-22-14, cert. ef. 1-1-15

837-095-0030
SERC Executive Committee

(1) The State Emergency Response Commission shall form a SERC Executive Committee whose purposes include but are not limited to:

(a) Advising the SERC on the designation of Emergency Planning Districts consistent with Oregon Administrative Rules (OAR) 837-095;

(b) Advising the SERC on the creation, modification, or dissolving of Local Emergency Planning Committees (LEPC) and on the confirmation of appointments to those committees;

(c) Reviewing plans developed by Local Emergency Planning Committees and making plan recommendations to the SERC;

(d) Supporting Local Emergency Planning Committee efforts to implement EPCRA and ORS 453.520;

(e) Supporting and assisting SERC and Local Emergency Planning Committee efforts to enhance hazardous materials emergency preparedness and response capabilities; and

(f) Coordinating hazardous materials training, education, and outreach activities as well as grant and technical assistance opportunities in support of the SERC and Local Emergency Planning Committees.

(2) The membership of the SERC Executive Committee shall be by agency or organization, each with one representative and one alternate. The SERC Executive Committee shall consist of the following:

(a) The director or a designee of the following state agencies:

(A) Oregon State Fire Marshal

(B) Oregon Office of Emergency Management

(C) Oregon Department of Transportation

(D) Oregon State Police

(E) Oregon Governor's Office

(F) Oregon Health Authority

(G) Oregon Department of Environmental Quality

(b) A representative from each of the following organizations or groups:

(A) Local Emergency Management

(B) Oregon Emergency Management Association

(C) Local Emergency Planning Committees

(D) Industry

(E) Oregon Fire Chiefs Association

(F) Oregon Regional Hazardous Materials Response Teams

(G) Oregon State Sheriffs' Association

(H) Oregon Tribes

(I) Association of Oregon Counties

(3) The SERC Executive Committee shall adopt bylaws and establish such policies and procedures as necessary to conduct its work.

Stat. Auth.: ORS 476.030(2)
Stats. Implemented: ORS 453.520
Hist.: OSFM 5-2014, f. 12-22-14, cert. ef. 1-1-15

837-095-0040
Emergency Planning Districts

The SERC designates each of the 36 counties of Oregon as an Emergency Planning District (EPD) for the purposes of EPCRA.

(a) Two or more emergency planning districts may combine resources and function as a single EPD by providing documentation of such request to the SERC from an authorized representative of each county.

(b) Should any county participating in a combined EPD desire to dissolve the combined EPD for any reason, an authorized representative of the county must notify the SERC as well as the other county(ies) involved in the combined EPD of their desire to withdraw from the combined EPD.

Stat. Auth.: ORS 476.030(2)
Stats. Implemented: ORS 453.520
Hist.: OSFM 5-2014, f. 12-22-14, cert. ef. 1-1-15

837-095-0050
Local Emergency Planning Committees

(1) A Local Emergency Planning Committee (LEPC) shall be formed in each EPD.

Membership in the LEPC should be guided by the EPCRA and be reflective of the stakeholders within each EPD.

(2) The duties and responsibilities of the LEPC should be consistent with the intent of EPCRA and focus on enhancing hazardous materials emergency planning, preparedness and response capabilities within the EPD.

(3) Each LEPC shall appoint a chairperson and adopt such policies and procedures as are necessary to conduct its work.

(4) Each LEPC shall maintain and provide to the SERC a list of contact information for all committee members.

(5) Each LEPC shall prepare an emergency plan, or annex to an appropriate county emergency operations plan, in accordance with EPCRA.

(6) Each LEPC shall review its community emergency response plan annually and submit the reviewed plan to the SERC for review and recommendations.

Stat. Auth.: ORS 476.030(2)
Stats. Implemented: ORS 453.520
Hist.: OSFM 5-2014, f. 12-22-14, cert. ef. 1-1-15

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Rule Caption: Amends rules to establish a new penalty matrix within the authority established in ORS 453.357
Adm. Order No.: OSFM 6-2014
Filed with Sec. of State: 12-22-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 837-085-0260, 837-085-0270, 837-085-0280, 837-085-0290, 837-085-0300, 837-085-0305, 837-085-0310
Subject: Rules are being amended to align the penalty matrix with the authority established in ORS 453.357.
Rules Coordinator: Valerie Abrahamson—(503) 934-8211

837-085-0260
Facility Response to Notices of Noncompliance

(1) After receipt of a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, the covered employer, owner or operator must submit all information requested by the Office of State Fire Marshal on or before the established compliance date.

(2) The above requirements shall not limit a covered employer's appeal rights.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0270
Penalty Criteria for Noncompliance — General

(1) Issuance of any penalty is subject to appeal in accordance with OAR 837-085-0330 through 837-085-0370.

(2) Any covered employer, owner or operator found to be in noncompliance may be assessed a penalty of up to a maximum of $1,000 per day for each day of noncompliance in accordance with ORS 453.357.

(a) The number of days the covered employer owner or operator is considered in noncompliance shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(b) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-85-0170(1) or (2) the required information is received by the requesting health professional.

(c) The daily maximum penalty is calculated by dividing the total penalties assessed by the number of days it takes the covered employer, owner or operator to achieve compliance.

(3) The noncompliance classification established in OAR 837-085-0280 shall be used to determine the penalty, if any, that will be assessed.

(4) Covered employers, owners or operators found to be in noncompliance in more than one Noncompliance Class (OAR 837-085-0280) shall have a penalty calculated and assessed for each Noncompliance Class.

(5) At any time prior to a Notice of Noncompliance and Proposed/Final Penalty Assessment Order becoming final, the Office of State Fire Marshal may modify the notice to reflect the correct noncompliance classification or penalty assessment.

(6) Nothing in these rules shall affect the ability of the Office of State Fire Marshal to modify penalties through a Stipulated Final Order.

(7) Penalty suspensions may be made in accordance with OAR 837-085-0310.

(8) Daily penalties shall be assessed in accordance with OAR 837-085-0305.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0280
Noncompliance Classes

For the purpose of determining the penalties that may be assessed for noncompliance, the following Noncompliance Classes are established:

(1) Class I Noncompliance. Covered employers, owners, and operators who fail to notify the Office of State Fire Marshal they have reportable quantities of hazardous substances, or fail to submit their Hazardous Substance Information Survey or substantive changes when required shall be considered in Class I Noncompliance.

(2) Class II Noncompliance. Covered employers, owners, and operators who fail to maintain records in accordance with OAR 837-085-0110; or when requested by the Office of State Fire Marshal, fail to provide an MSDS or other hazardous substance information not elsewhere classified, who report all their hazardous substances but fail to submit the information required by OAR 837-085-0090 or who report the information incorrectly, shall be considered in Class II Noncompliance. Exceptions: Failing to submit or submitting incorrect information on the following will not be considered Class II Noncompliance or any other class of noncompliance:

(a) North American Industry Classification System;

(b) Dun and Bradstreet Number;

(c) Send to Attention of;

(d) Department or Division;

(e) Written Emergency Plan and, if so, the location;

(f) Automatic Fire Suppression System;

(g) NFPA 704 Placarding;

(h) Other Types of Placarding.;

(i) UN or NA Numbers

(3) Class III Noncompliance. Covered employers, owners, and operators who, when submitting their Hazardous Substance Information Survey, substantive changes or survey corrections, fails to report the hazardous substance information correctly, shall be considered in Class III Noncompliance.

(4) Class IV Noncompliance. Covered employers, owners, and operators who when submitting their hazardous substance information survey, substantive changes or survey corrections, fail to report all reportable hazardous substances or fail to report the correct maximum daily quantity shall be considered in Class IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners, and operators who intentionally misreport on their Hazardous Substance Information Survey, substantive changes, survey corrections or records of hazardous substances or fail to provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, shall be considered in Class V Noncompliance.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 1-2014, f. & cert. ef. 1-9-14; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0290
Penalties for Class I, II and III Noncompliance

(1) Covered employers, owners or operators identified as being in Class I, II, or III Noncompliance shall be assessed a penalty for each Noncompliance Class for which they are found to be in noncompliance. The penalty assessments shall be made using the penalty schedule set forth in subsection 2 of this section. Exception: If penalties are assessed for Class I non-compliance then no other penalties will be assessed for any of the other classes of non-compliance.

(2) Class I, II and III Noncompliance Penalty Schedule:

(a) Class I — $1000.

(b) Class II — $150.

(c) Class III — $200.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0300
Penalties for Class IV Noncompliance

(1) A penalty shall be calculated for unreported radioactive substances, radioactive wastes, explosives or highly toxic materials. These substances are required to be reported at the "Lower Reporting Levels" (LRL) of five gallons, ten pounds or 20 cubic feet. Penalties for all Extremely Hazardous Substances shall be calculated at the LRL.

(2) A separate penalty shall be calculated for all other unreported hazardous substances. These substances are required to be reported at the "Upper Reporting Levels" (URL) of 500 gallons, pounds, or cubic feet.

(3) For the purpose of determining individual substances, Material Safety Data Sheets will be used.

(4) A penalty determination shall be made for Lower Reporting Levels (LRL) and Upper Reporting Levels (URL) substances using the following criteria:

(a) When the facility fails to report any number of substances required to be reported at the LRL, a penalty of $425 will be assessed.

(b) When the facility fails to report any number of substances required to be reported at the URL, a penalty of $225 will be assessed.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 5-2013, f. & cert. ef. 6-26-13; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0305
Penalties for Class V Noncompliance

Covered employers, owners or operators identified as being in Class V Noncompliance shall be assessed a $1000 penalty for each day they are in noncompliance.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

837-085-0310
Penalty Suspensions

(1) Penalties assessed for Class I, II, III and IV Noncompliance will be suspended in accordance with the following criteria:

(a) To receive a penalty suspension covered employers, owners or operators receiving a Notice of Noncompliance and Proposed/Final Penalty Assessment Order must comply with all the noncompliance issues identified in the notice.

(b) Compliance must be achieved no later than the established compliance date set forth in the notice.

(c) Penalty suspensions will be calculated for each class of noncompliance identified in the Notice of Noncompliance and Proposed/Final Penalty Assessment Order.

(d) Penalty suspensions will be calculated using the Penalty Suspension Schedule set forth in subsection 3 of this section.

(2) If a covered employer, owner or operator is found to be in repeat noncompliance with in a three year period of time the amount of penalty suspended shall be reduced based on the instance of the repeat noncompliance.

(3) Penalty Suspension Schedule:

(a) Instance — Amount Suspended.

(b) 1st — 100%.

(c) 2nd — 50%.

(d) 3rd — 0%.

(4) Penalty suspensions will not be made on Class V Noncompliance penalty assessments.

Stat. Auth.: ORS 453.367
Stats. Implemented: ORS 435.357
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 6-2014, f. 12-22-14, cert. ef. 1-1-15

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

Rule Caption: Updates DMV's procedural rule on agency representation at contested case hearings
Adm. Order No.: DMV 16-2014
Filed with Sec. of State: 12-19-2014
Certified to be Effective: 12-19-14
Notice Publication Date: 11-1-2014
Rules Amended: 735-001-0040
Subject: The Attorney General is authorized to consent to agency representation by an agency officer or employee in particular hearings or a particular class of contested case hearings, in accordance with ORS 183.452. Earlier this year, DMV requested and was granted authorization from the Attorney General for agency representation to conduct contested case hearings for: Civil penalties for violations related to dismantlers assessed under authority of ORS 822.137 and OAR chapter 735, division 152; Cancellation of vehicle title and registration under authority of ORS 809.090 and 809.095; Implied consent cases under ORS 813.410 and OAR 735, division 90; Denial, suspension or revocation of a commercial driving school certificate; Denial, suspension or revocation of a commercial driver training instructor certificate; Suspension or cancellation of identification cards.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-001-0040
DMV Representation at Contested Case Hearings

(1) This rule authorizes an agency officer or employee to represent DMV at a contested case hearing as described in this rule. Except for a hearing described under ORS 183.430(2), the Attorney General has granted authority to DMV to appoint officers or employees to represent DMV at contested case hearings regarding:

(a) Suspension, revocation and cancellation of driving privileges;

(b) Non-issuance of driver licenses and identification cards;

(c) Suspension or cancellation of identification cards;

(d) Suspension, revocation, cancellation, probation and denial of vehicle dealer certificates;

(e) Suspension, revocation, cancellation and denial of dismantler certificates;

(f) Suspension, revocation, denial and refusal to issue or renew a towing company certificate;

(g) Revocation and denial of a vehicle transporter certificate;

(h) Civil penalties assessed on unlicensed dealers and on licensed dealers who violate the laws and rules relating to the sale of vehicles under the authority of ORS 822.009 and OAR chapter 735, division 150;

(i) Civil penalties for violations related to dismantlers assessed under authority of ORS 822.137 and OAR chapter 735, division 152;

(j) Cancellation of vehicle title and registration under authority of ORS 809.090 and 809.095;

(k) Implied consent cases under ORS 813.410 and OAR 735, division 90;

(l) Denial, suspension or revocation of a commercial driving school certificate; and

(m) Denial, suspension or revocation of a commercial driver training instructor certificate.

(2) The administrative law judge shall not allow an agency representative appearing under section (1) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (1) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4) An agency representative appearing under section (1) must read and be familiar with the most recently published Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at http://www.doj.state.or.us.

Stat. Auth.: ORS 183.415, 183.450, 183.452, 184.616, 814.619 & 802.010

Stats. Implemented: ORS 183.450

Hist.: MV 16-1988, f. & cert. ef. 5-18-88; MV 3-1991, f. & cert. ef. 5-16-91, Renumbered from 735-070-0100; MV 9-1992, f. & cert. ef. 8-17-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 16-2014, f. & cert. ef. 12-19-14

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Adds definitions; adds criteria for non-OAS illuminated (digital) signs; clarifies restrictions on temporary signs

Adm. Order No.: HWD 11-2014

Filed with Sec. of State: 12-19-2014

Certified to be Effective: 12-19-14

Notice Publication Date: 11-1-2014

Rules Adopted: 734-059-0040, 734-060-0190

Rules Amended: 734-059-0015, 734-059-0020, 734-059-0025, 734-059-0220, 734-060-0000, 734-060-0007, 734-060-0175

Subject: This rulemaking adds language in the definitions portion of chapter 734 that will assist the Department in communicating the scope of certain rules as they apply to the location of outdoor advertising signs. In addition, guidance is provided for non-outdoor advertising digital signs that are visible to a state highway. This addresses an ongoing issue with driver safety caused by lack of clear standards for digital sign illumination and brings non-outdoor advertising signs into an illumination standard comparable to regulated outdoor advertising digital signs. Some edits further clarify current practices and policies of the department regarding the outdoor advertising permit process.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-059-0015
Definitions

(1) The terms "neat," "clean," "attractive" and "good repair" as used in ORS 377.710(18) and 377.720(8) are defined as follows:

(a) The terms "neat" and "attractive" mean without rotting or broken parts, having parts that are solid and sound, without chipping or peeling paint, paper, vinyl or plastic, without graffiti, and without faded, washed-out or illegible copy. The terms apply to all component parts of a sign.

(b) The term "clean" means free of dirt, unsoiled, without grime or soot. The term does not include a minor dust coating that is undetected from the main-traveled way of a state highway. The term applies to all component parts of a sign that are visible to the main-traveled way of a state highway.

(c) The term "good repair" means having sound and solid parts, without rotting or broken parts, firmly fixed in place so as to be able to withstand a wind pressure of 20 pounds per square foot of exposed surface. The term includes all component parts of a sign.

(2) In interpreting ORS 377.720(9), to be considered "used in transportation" the owner or operator must demonstrate the vehicle or trailer is regularly used in a manner consistent with its usual purpose. The Department may consider but is not limited to the following factors:

(a) Whether it is used only for storage;

(b) Whether it is incapable of being moved in its normal way, such as due to a flat tire or mechanical problems;

(c) Whether its movement would be illegal such as if its registration has expired;

(d) Whether its location is compatible with being regularly used in transportation;

(e) How frequently it is moved;

(f) How far it is moved;

(g) Whether any change in location appears to be a mere attempt to qualify a sign structure under the exemption.

(3) In interpreting ORS 377.773, "abandoned" means any sign that does not have a message on the display surface for a period of six months, a sign for which there is no display surface for a period of six months or a sign whose structure has been removed for a period of six months. For abandoned signs under ORS 377.773 the sign permit may be canceled at the end of the 6-month period. If requested prior to the next January permit renewal period, upon written request by the sign owner of record, and payment of the required relocation credit banking fee, the canceled permit may be converted to a relocation credit for future use.

(4) In interpreting ORS 377.700 to 377.844 and 377.992 the term "person" includes individuals, joint ventures, partnerships, corporations and associations or their officers, employees, agents, lessees, assignees, trustees or receivers.

(5) In interpreting ORS 377.700 to 377.844 and 377.992 an Outdoor Advertising Sign Permit Owner is a single person, or their authorized representative, who holds the right to authorize an activity associated with the permit including sign reconstruction, direct relocation, relocation credit request or the sale of a sign permit or relocation credit.

(6) Signs visible to or from the "Traveled Way" or "Main Traveled Way."

(a) For the purposes of the outdoor advertising sign program, to qualify as a business or activity open to the public, some portion of the regularly used buildings, parking lots, storage or processing areas where the qualifying business or activity is conducted must be immediately adjacent to the sign and a permanent building or structure where the business or activity is conducted must be visible from the traveled way or main-traveled way.

(b) The following criteria will be used in determining which signs have been erected for the purpose of their messages being read from the traveled way or the main traveled way:

(A) Location of sign;

(B) Local terrain and physical obstructions;

(C) Size of sign;

(D) Angle of sign in relation to a state highway;

(E) Distance from a state highway in relation to size of sign.

Stat. Auth.: ORS 184.616, 184.619, 377.710 & 377.720

Stats. Implemented: ORS 377.720
Hist.: TO 4-2002, f. & cert. ef. 4-15-02; HWD 1-2009, f. & cert. ef. 2-20-09; HWD 11-2014, f. & cert. ef. 12-19-14

734-059-0020
Business Defined

(1) As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, a business means a commercial or industrial enterprise operated with the intent of economic gain.

(2) The location of a business includes the main buildings as well as other physical areas necessary or customarily incident to the business, including a limited amount of open space as is arranged and designed to be used in immediate connection with such buildings and uses.

Stat. Auth: ORS 184.616, 184.619, 377.710,377.720
Stats. Implemented: ORS 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07; HWD 11-2014, f. & cert. ef. 12-19-14

734-059-0025
Activity Open to the Public

As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, an activity open to the public means a location, the main purpose of which involves the admission of or providing service to members of the public. This includes:

(1) Places of worship;
(2) Educational facilities;
(3) Meeting halls;
(4) Facilities of non-profit or charitable organizations;
(5) Public parks;
(6) Government offices.

Stat. Auth: ORS 184.616, 184.619, 377.710,377.720
Stats. Implemented: ORS 377.710, 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07; HWD 11-2014, f. & cert. ef. 12-19-14

734-059-0040
Qualifying as a Business or Activity Open to the Public

(1) The following are not Businesses or Activities Open to the Public for the purposes of the Outdoor Advertising Sign Program:

(a) Outside advertising sign structures;

(b) Agricultural, forestry, ranching, grazing, farming land and related activities, including, but not limited to, temporary roadside food and produce stands including seasonal stands;

(c) Activities that are housed in a temporary building or structure that are visible to the traffic lanes of the traveled way and do not have indoor restrooms, utilities, running water, functioning electrical connections or adequate heating;

(d) Where conducted in a building that is primarily used as a residence, apartment house or residential condominium;

(e) Recreational facilities such as campgrounds, golf courses, tennis courts, wild animal parks, and zoos, except for the portion of the activities occupied by permanent buildings and parking lots which otherwise meet the criteria in this subsection;

(f) Public or private utilities including telephone poles, radio, microwave or cellular communication towers; and,

(g) Railroad tracks

(2) In determining whether a location is a business or activity open to the public, the Department may consider the totality of the circumstances, including but not limited to the following:

(a) If a business license has been issued by the state;

(b) Whether the facility is open to potential customers, with regular hours of operation;

(c) Whether there is appropriate vehicular access and parking present;

(d) Whether there are indices of operation such as a telephone, or other communication service, appropriate utility connections, appropriate equipment, restroom facilities, permanent facility structures, etc.; and,

(e) How long the operation has been in existence.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.720
Stats. Implemented: ORS 377.720
Hist.: HWD 11-2014, f. & cert. ef. 12-19-14

734-059-0220
Aggregation of Small Relocation Credits

(1) Upon request from the sign permit owner, or their authorized representative, the Department shall issue a relocation credit for the total square footage of the single, largest sign face of one side of an outdoor advertising sign.

(2) As provided in ORS 377.763 the owner of relocation credits may apply to combine (aggregate) them into a single credit. This rule establishes the criteria for aggregation, the procedure to request aggregation, and the procedure the Department will follow to process those requests.

(3) Qualification for participation:

(a) The relocation credit must be recognized as valid under ORS 377.766. This includes verification by the Department that the sign structure was removed.

(b) The relocation credit size may be no larger than 249 square feet.

(c) If the Department is aware of any dispute about the ownership or right to utilize the credit it may not be aggregated unless the issue has been resolved.

(4) Application for Aggregation of Relocation Credits

(a) To aggregate relocation credits, the owner of a relocation credit must submit a written request to the Department of Transportation Outdoor Advertising Sign office. The request must be dated and must bear the original signature of the owner or owner's authorized representative.

(b) The request must include the relocation credit numbers sought to be aggregated, and the area (described in square feet) the owner calculates for the anticipated single credit.

(5) Department Processing of Application for Aggregation of Relocation Credits

(a) The Department will determine whether each relocation credit qualifies for aggregation. If any do not, the Department will advise owner and attempt to reach agreement on the qualification under law. If an agreement is not reached the Department will reject the request to aggregate.

(b) If each relocation credit qualifies for aggregation, the Department will determine whether the area of the anticipated credit calculated by the owner is the same as the area calculated by the Department, and whether it is within the statutory maximum for size. If the anticipated sizes are not the same, or if the projected size exceeds the statutory maximum, the Department will advise applicant and attempt to reach agreement on the correct size under the law. If an agreement is not reached the Department will reject the request to aggregate.

(c) If each relocation credit qualifies for aggregation and no issue exists as to the size of the anticipated credit, the Department will notify the owner in writing of the cancellation of the smaller credits and the creation of the single larger credit.

Stat. Auth.: ORS 184.616, 184.619, 377.763, 377.759, & 377.992
Stats. Implemented: 377.763, 377.759 & 377.992
Hist.: HWD 11-2010, f. & cert. ef. 9-27-10; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0000
Outdoor Advertising Sign Application Process

(1) Application forms. An application for a sign permit under the Oregon Motorist Information Act (OMIA) is made by completing and submitting the appropriate form, attaching to the form all documents necessary to show the application meets the requirements of the law, and submitting the correct fee to the Outdoor Advertising Sign Program of the Oregon Department of Transportation. Application forms are available from the Outdoor Advertising Sign Program. There are three different Outdoor Advertising Sign application forms: "Standard Outdoor Advertising Sign Permit Application" for new permits for outdoor advertising signs that preexisted the law change on May 30, 2007, relocations and reconstructions of such permitted signs; "Digital Billboard Outdoor Advertising Sign Application" for digital permits newly issued under ORS 377.710, or relocation and reconstruction of such permitted signs and "Application for Transit Bench or Shelter Sign" for signs on bus/transit benches and bus/transit shelters. The Department may deny a permit application if the applicant does not use the correct form.

(2) Copies of sign laws. The Department will make available copies of all state sign statutes, administrative rules, federal statutes, federal regulations, and federal-state agreements in effect. The Department may charge for the copies at the rate established by law for public records requests, and may require prepayment. The Department may also provide these documents by e-mail, web site, or in other forms for the convenience of the public and the Department.

(3) Summary of regulations. To assist potential permit applicants and the general public, the Department will make available a summary of sign permit regulations. The summary does not bind the Department to the items listed or waive its right and duty to enforce all requirements under the law.

(4) Contents of applications for Standard Outdoor Advertising Signs and Digital Billboard Outdoor Advertising Signs. To be complete the application must include the following.

(a) Application form Part 1: Applicant Information, Sign Specifications. Information must be complete and accurate for applicant, sign builder, purpose of application, description, township/range/section/tax lot, highway route number or name and side of highway, how

site is marked, name and address of property owner, and why the sign will be an "outdoor advertising sign." The location boxes should be completed to the best of applicant's ability to enable the Department to find the site.

(b) Application form Part 2: Certification of Applicant. The application form must be signed and dated by the applicant, certifying the information provided by applicant is accurate and has not been changed after the local government certification (see section (c) below). If the applicant is a corporate or other business entity the individual signing must include their title so as to indicate the authority to sign for the applicant.

(c) Application form Part 3: Certification of Local Jurisdiction. After completing Part 1, applicant must submit the complete application to the local jurisdiction for zoning and local compliance information. The local official must complete Part 3 and, if relevant, attach a letter of explanation of local code compliance. The local official must sign and date Part 3. This section does not apply to transit signs.

(d) Fee. The fee is based on square footage as described in OAR 734-059-0100. To be complete applicant must submit the correct application fee. The Sign Program does not accept cash, debit or credit cards; checks must be made out to Oregon Department of Transportation.

(e) Written proof of landowner consent. All applications, except transit sign applications, must include written proof that the landowner consents to have applicant maintain the proposed sign. The document must be signed by the landowner and the application filed during the base term of the agreement, or during a renewal term that is automatic or at applicant's election. If during a renewal period applicant must certify that the renewal was exercised and continues in effect. Examples of acceptable documents are the land lease, land lease plus applicant's certification as described above, land lease plus owner's written confirmation that an extension is being exercised, or a current memo signed and dated by land owner stating that applicant has permission to put the sign at the specified location. Payment information need not be included unless it is the evidence that compensation is exchanged making it an outdoor advertising sign.

(f) Business License. The applicant and the sign builder must have a current outdoor advertising sign business license as required under ORS 377.730. It is the responsibility of the Business License holder who erects or maintains an outdoor advertising sign to ensure that the outdoor advertising sign, visible to a state highway, is in compliance with the OMIA. Compliance includes ensuring signs have an active state sign permit prior to placing or maintaining any message on the sign, and ensuring that the sign stays in compliance during the time that the licensee operates or maintains the sign. Violations may result in suspension or revocation of the licensee's business license as allowed under ORS 377.730.

(g) Relocation permit application. For a relocation application, if the zoning was first commercial or industrial after 1/1/1973, or if the local jurisdiction cannot determine the date, the applicant must submit a sketch or other document showing the site is within 750 feet of a commercial or industrial area to comply with ORS 377.767(3).

(h) Pre-existing sign permit application. For an application for a new pre-existing sign under ORS 377.712 the following additional items are required:

(A) Complete the application form "Supplement for Pre-existing Sign Permit" and sign it before a notary public;

(B) Submit documents demonstrating each of your claims, such as a lease showing the sign was posted for compensation; and

(C) Pursuant to ORS 377.712(1), include documentation demonstrating how applicant was ignorant of the permit requirement for outdoor advertising signs as of May 30, 2007.

(5) Digital Billboard applications must also include the following information:

(a) When being reconstructed or relocated for the first time as a digital billboard the applicant must provide the eligible permit(s) or relocation credit(s) being retired pursuant 377.700 to 377.840 and OAR 734-060-0007.

(b) Whether the proposed sign is a "Poster," "Bulletin," or other sign as described in OAR 734-060-0007(2).

(c) Emergency malfunction contact information including name, phone number along with proposed response procedure to possible malfunction.

(d) Whether or not a renewable energy resource is available and being utilized. If none, then the applicant must complete the affidavit attesting that no renewable resource is available.

(6) Transit Bench or Shelter Application. A transit shelter or bus bench application must provide documentation demonstrating that the site is at an official bus or transit stop on a city or urban transit system route.

(7) Complete Applications.

(a) The Outdoor Advertising Sign Program's mailing address is: Oregon Department of Transportation, Right of Way Section — Sign Program, 4040 Fairview Industrial Drive SE, MS #2, Salem OR 97302. The Sign Program receives hand deliveries at 4040 Fairview Industrial Drive SE, Salem Oregon. The Sign Program receives facsimiles at 503-986-3625. The Sign Program receives electronic mail at OutdoorAdvertising@odot.state.or.us.

(b) The Department requires original signatures and original initials to any changes on the application form. Therefore the Department will not accept the application form by electronic transmission (including facsimile). The Department may accept other documents by electronic transmission. The Department will not accept any changes made verbally; all changes must be in writing.

(c) The Department will indicate on each application document the date and time received. Application materials received by mail will be treated as received at the time a representative of the sign program physically receives the program's mail for that day. Application materials received in person, by fax, or by electronic transmission will be treated as received when a representative of the sign program physically receives those materials.

(d) The Department will only process applications that are complete. An application is complete when the Outdoor Advertising Sign program receives the signed application form including all necessary information, all documents necessary for issuance of a permit, and the correct application fee.

(A) Within 15 calendar days of receiving an application the Department will provide to the applicant written notice whether the application is complete. If the Department determines the application is complete, the notice will state the application's priority among all pending, complete applications.

(B) If the Department determines any information provided is incorrect, the application is not complete. The Department may rescind a notice of completeness and priority date if it later determines that information provided by applicant is not correct.

(e) If an application is not complete, within 15 calendar days of receiving the application the Department will return the entire application with written instructions on what is needed to complete it. The applicant must initial any subsequent changes and, if the changes are substantive to the local jurisdiction, must obtain a new certification from the local jurisdiction.

(A) If an application form is complete but the application is considered incomplete due to insufficient supporting documents or failure to submit the fee, the Department may return the entire application with written instructions on how to complete it or the Department may hold the application and notify the applicant in writing of what is needed and when it must be provided.

(B) Within 15 days of receiving the corrected form or additional materials the Department will provide the applicant written notification whether the application is complete and, if complete, the priority among all pending, complete applications.

(C) If the applicant makes any change to the application after it is deemed complete, the Department will change the priority date to the date of that change.

(D) If the Department has held an incomplete application for 60 days from the date of initial receipt, the application is deemed withdrawn by the applicant. The Department will return a copy of the application and may refund any eligible deposited fee. The Department will retain the original application for our records.

(8) Processing of complete permit application.

(a) The Department will approve or deny a permit within 60 days of the complete application's priority date as determined under section (7)(d) or (e) of this rule if the application clearly does not conflict with another complete application.

(b) An application for a permit that conflicts with the location of an expired or canceled permit will not be processed until the time for any hearing or appeal on the latter permit has passed, unless the permit is being canceled as a condition for issuance of the new permit.

(c) When a complete application might conflict with another complete application due to spacing or any other reason, the application with the earliest priority date and time takes precedence over later applications. Subject to all other requirements of the OMIA, the Department will issue the permit to the earlier applicant.

(d) If multiple complete applications have the same priority date and time, and are determined by the Department to compete for the same spot, the Department shall notify the applicants of the circumstances within

seven days of the Department's determination. If an affected applicant requests a contested case hearing, the matter will be determined by a single contested case hearing under Oregon's Administrative Procedures Act. The Department shall refer the matter to the Office of Administrative Hearings within seven days of an applicant's written hearing request.

(e) If the Department does not approve or deny a permit application within the time allowed under section (8)(a) of this rule, such actions do not require the Department to issue a permit or require any remedy except as provided otherwise in law.

(9) Field checks; applicant requirements and Department method.

(a) When the Department determines an application is complete, the Department will perform a field check to determine the milepoint and all other information necessary to process the application.

(b) The applicant must place a marking at the site to show the proposed location for the sign permit. The applicant may use a stake, ribbon, paint, or any method or material that will allow the Department to easily locate the site and attribute it to the applicant. If the marked site is other than that represented to the local authority in obtaining its signature on the application form, or is other than where the applicant actually builds the sign, the Department may consider that a violation of ORS 377.725(10).

(c) If the Department cannot locate the site it will notify the applicant pursuant to (5)(e) above that the application is incomplete due to incorrect information and may request reasonable action by the applicant to identify the site.

(d) The Department will conduct a field check by traveling to the proposed site and calculating the milepoint to the one-hundredth of a mile or, when necessary, to the one-thousandth of a mile. The Department may also determine the engineering station. The Department may also make any other determination regarding the site that is relevant to the application, such as proximity to the right of way and to a commercial or industrial area. Once a field check has been conducted the application fee is non-refundable.

(e) The Department may use intersections, highway structures, or other highway feature and its corresponding milepoint or engineering station, to measure and calculate the milepoint of the proposed site. Milepost markers are for the convenience of motorists and are not precise indications of the milepoint, therefore the Department will not use milepost markers for these calculations without other indication of accuracy.

(10) Denied Permit Applications. If the Department denies an application, it will consider that site as conflicting with other applications:

(a) Until the time to request a hearing elapses without a hearing request from the applicant; or

(b) If a hearing is requested, until the time to request an appeal on the final order has elapsed or until the final appellate court enters a judgment on the matter, whichever is later.

(c) The Department will keep the original application and any accompanying documents and return a copy after an application is denied.

(11) Issued Permits.

(a) The permit will specify the 180th day by which the sign must be constructed.

(b) Within 190 days of permit issuance, the permittee must notify the Department in writing if the action described in the permit has been completed, and include at least one photograph demonstrating that completion. For a reconstruction permit or a relocation permit based on a relocation credit, the notice must state that the new sign has been constructed. For a direct relocation the notice must state that the new sign has been constructed and the former sign on which the permit was based has been removed. If the Department has not received the notification within 180 days the Department will alert the permittee about the upcoming 190-day deadline. If the permittee fails to submit the written notice and photograph within the time allowed, the Department will cancel the permit to relocate or reconstruct, and the permit will revert to its prior status. No fees will be refunded.

(c) "Constructed" means that the structure and all sign faces are permanently in place and the permit plate is attached. "Removed" means the taking down, removing, or eliminating all sign structure elements that are visible from the state right of way

Stat. Auth.: ORS 184.616, 184.619, 377.715, 377.725
Stats. Implemented: ORS 377.715, 377.725
Hist.: HWD 2-2009, f. 3-20-09, cert. ef. 3-23-09; HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0007
Digital Billboard Procedures

(1) This rule describes the process for applying for a permit for a digital billboard.

(2) Definitions for the purposes of this rule:

(a) "Sign" means the sign structure, the display surfaces of the sign, and all other component parts of the sign.

(b) "Retire" means to use a relocation credit such that it no longer exists or to remove an existing sign to become a relocation permit or credit for use.

(c) "Bulletin" means an outdoor advertising sign with a display surface that is 14 feet by 48 feet.

(d) "Poster" means an outdoor advertising sign with a display surface that is 12 feet by 25 feet.

(e) "Digital Billboard" means an outdoor advertising sign that is static and changes messages by any electronic process or remote control, provided that the change from one message to another message is no more frequent than once every eight seconds and the actual change process is accomplished in two seconds or less.

(3) Qualifications for receiving a digital billboard state sign permit:

(a) The proposed site and digital billboard must meet all requirements of the OMIA including, but not limited to, the following:

(A) the digital billboard is not illuminated by a flashing or varying intensity light.

(B) the display surface of the digital billboard does not create the appearance of movement.

(C) the digital billboard must operate at an intensity level of not more than 0.3 foot-candles over ambient light as measured by the distance to the sign depending upon its size.

(D) The distance measurement for ambient light is: 150 feet if the display surface of the sign is 12 feet by 25 feet, 200 feet if the display surface is 10.5 by 36 feet, and 250 feet if the display surface is 14 by 48 feet.

(b) Applicant must submit a completed application for a digital billboard state sign permit using the approved form that may be obtained by one of the following methods:

(A) Requesting from Sign Program Staff by phone at 503-986-3650;

(B) Email: OutdoorAdvertising@odot.state.or.us;

(C) Website: http://www.oregon.gov/ODOT/HWY/SIGNPROGRAM/pages/index.aspx.

(c) The Department shall confirm that any existing permitted Outdoor Advertising Sign or relocation credit being retired for the purpose of receiving a new digital billboard state sign permit has been removed within the 180 days allowed to construct the new permitted sign. The Department will not charge a Banking Permit Fee for the cancellation of state sign permits retired for the purpose of receiving a new digital billboard permit.

(4) This section sets forth the criteria for determining the required relocation credits or existing permitted signs that an applicant shall retire to receive one new digital billboard state sign permit:

(a) Applicants who own 10% or less of all active relocation credits at the time the application is submitted shall either remove one existing state permitted outdoor advertising sign with a display area of at least 250 square feet or provide one active relocation credit of at least 250 square feet and retire that permit. Applicants meeting these criteria are not limited to either "Bulletin" or "Poster" billboards.

(b) Applicants who own more than 10% of all active relocations credits shall apply for a new digital billboard state sign permit as follows:

(A) For a digital billboard that is intended to be a bulletin, the applicant has three options:

(i) Remove two existing bulletins, retire the permits for those signs, and retire three relocation credits; or

(ii) Remove one existing bulletin and two existing posters, retire those permits and retire three active relocation credits; or

(iii) Remove four existing posters, retire the permits for those signs, and retire three relocation credits.

(B) For a digital billboard that is intended to be a poster, the applicant has two options:

(i) Remove two existing posters, retire the permits for those signs, and retire three relocation credits;

(ii) Remove one existing bulletin, retire the permit for that sign, and retire three relocation credits.

(c) For an active relocation credit to be eligible it must be at least 250 square feet. All permits and relocation credits submitted under these procedures will be permanently cancelled and are not eligible for renewal.

(d) Any state sign permits submitted for retirement must include the written statement notifying the Department that the "lease has been lost or cancelled."

(5) The Department will determine the percentage of relocation credits owned by an applicant by dividing the total number of unused relocation

credits by the total number of unused relocation credits owned by the applicant on the day the application is received.

(6) Two digital billboard state sign permits are required for any back to back or V-type digital sign. A separate application is required for each digital sign face.

(7) The first time a digital billboard is permitted it is not subject to the 100-mile rule in ORS 377.767(4). The site of the newly permitted billboard will become the established location for future reference.

(8) Relocation of permitted digital billboards. The Department will issue one digital relocation credit for each permitted digital sign that is removed. The digital relocation credit issued will be for the same square footage as the permitted digital sign that was removed. A digital relocation credit can only be used to relocate a digital billboard. A permitted digital sign can only be reconstructed as a digital billboard.

(9) Use of renewable energy resource. The applicant must provide a statement with the application that clarifies what, if any, renewable energy resources are available at the site and are being utilized. If none, then a notarized statement to that effect must be included with the application.

(10) All permitted digital billboards must have the capacity to either freeze in a static position or display a black screen in the event of a malfunction.

(a) The applicant must provide emergency contact information that has the ability and authority to make modifications to the display and lighting levels in the event of emergencies or a malfunction.

(b) The Department will notify the sign owner of a malfunction that has been confirmed by ODOT in the following instances:

(A) The light impairs the vision of a driver of any motor vehicle; or

(B) The message is in violation of ORS 377.710(6) or 377.720(3)(d).

(11) All digital billboard signs must comply with the light intensity and sensor requirements of ORS 377.720(3)(d).

(a) The Department will take measurements of the permitted digital billboard when notified that the sign has been constructed and the permit plate has been installed.

(b) The Department will use an approved luminance meter designed for use in measuring the amount of light emitted from digital billboards using the industry standard for size and distance as follows:

(A) 150 feet for 12'x 25.'

(B) 200 feet for 10.5'x 36'.

(C) 250 feet for 14'x 48'.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.729, 377.753
Stats. Implemented: ORS 377.710, 377.720, 377.750, 377.767
Hist.: HWD 9-2011(Temp), f. 8-24-11, cert. ef. 9-29-11 thru 3-26-12; HWD 6-2012, f. & cert. ef. 3-26-12; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0175
Temporary Signs

(1) This rule is enacted pursuant to ORS 377.735 regarding the permit exemption for temporary signs and in furtherance of the Oregon Motorist Information Act (OMIA, 377.700 through 377. 840 and 377.992).

(2) Location generally. A temporary sign may be erected outside of state highway right of way, within view of a state highway, subject to the requirements of the local jurisdiction and the OMIA. A sign that complies with all the provisions of ORS 377.735(1)(b) may be erected without prior approval of the Department. A sign that requires a variance to comply must obtain that variance before erecting the sign. The Department may, at its discretion, retroactively grant a variance.

(3) The entire message must be contained on one sign. Fragmentation of messages on separate sign panels is prohibited.

(4) Changes in copy or location. For the sake of the time limits described in ORS 377.735(1)(b), the following will be considered one sign:

(a) The same sign structure, regardless of copy, moved less than 600 feet from a former site; or

(b) A different sign structure, regardless of copy, in approximately the same location as another sign that was removed.

(5) Variance Procedure.

(a) A variance request must be in writing on a form provided by the Department. The request must be sent to the Outdoor Advertising Sign Program. There is no fee for a variance.

(b) A variance request must describe the specific location including:

(A) Name or number of highway;

(B) Side of highway; and

(C) Approximate milepoint, distance from a known highway feature (e.g. an intersection), or physical address.

(c) A variance request must describe the reason that constitutes good cause to grant the variance. If a reason is the amount of copy itself, requester must include the proposed copy. The Department may consider the amount, not the substance, of the copy.

(d) The request must include the name and mailing address of the requester. If the requester wants the Department to be able to make contact in any other way, such as to obtain supplemental information to process the request, requester may also include that contact information. The requester will be considered a sign owner for the sake of violation of sign laws.

(e) The request must include the date the sign will be posted and the date it will be removed so as to comply with the time limits to qualify for the exemption.

(f) Requester must certify that he or she:

(A) Has permission from the person in control of the property to post the sign;

(B) Will comply with all requirements of the local jurisdiction;

(C) Will not pay or receive any form of compensation for posting the sign; and

(D) Will comply with all requirements of the OMIA.

(g) The Department must grant or deny the request within 14 days after the Outdoor Advertising Sign Program receives it. The Department may deny applicant's variance request due to lack of required information; the applicant may re-submit the request. If the Department denies a request, fails to make a decision within 14 days, or grants and later revokes a variance, the requester may request a contested case hearing. Failure of the Department to meet the time limits required by this rule does not require that the variance be granted.

(h) If the Department determines a requester provided false information, including a false certification under (3)(f), it may deny the request and revoke any variance already granted to that person or the organization the applicant represents.

(i) Variances for both size and time will not be granted to the same sign or location. The Department will not grant more than 10 variances to one requester or organization for the same period of time.

(6) Specific Variance Criteria.

(a) Variance for size. The Department may grant a variance for size up to 32 square feet per side of a back-to-back sign. Good cause to grant a size variance may include, but is not limited to the following:

(A) Due to highway speed, width of right of way, topography, or other similar reasons beyond the applicant's control, the sign copy will not be legible to motorists if the sign is 12 square feet or less;

(B) Due to the amount of copy on the sign, the copy will not be legible to motorists if the sign is 12 square feet or less; or

(C) The sign was manufactured before the 12/13/2001 change in administrative rules regarding exempt signs, and the sign continues to comply with those former rules.

(b) Variance for time. The Department may grant a variance for time up to a total of 90 continuous days in a calendar year. The Department may grant the variance for good cause shown. Good cause may include, but is not limited to, a showing that:

(A) The applicant is attempting to obtain an outdoor advertising sign permit for the sign but will be unable to complete the application process within 60 days;

(B) Due to conditions of the land, weather, or similar reasons beyond requester's control, requester will be unable to remove the sign within 60 days.

(7) Prohibitions and penalties.

(a) Other than official traffic control devices, signs are prohibited in state highway right of way. Accessing a sign or sign site by crossing access-controlled right of way is prohibited. Violations of this rule are subject to ORS 377.725(9) and any other removal or penalty provision under law. Signs in or overhanging state highway right of way may be removed pursuant to ORS 377.650 and OAR 734-060-0060 to 734-060-0070.

(b) Signs outside of right of way are subject to the removal procedures of ORS 377.775, and the penalty provisions of ORS 377.992 as well as any other penalty provision under law.

(c) If the sign or site has been accessed from access-controlled right of way, or the sign has been placed in or overhanging right of way, the Department may revoke any variance for that sign, by that requester, or by the represented organization. The Department may deny any subsequent variance request for that sign, by that requester, or by that organization at any location. If the Department discovers multiple violations of (a) above, it may file for an injunction under ORS 374.415.

(8) Signs erected under this rule are subject to the provisions of ORS 377.720 and to all applicable state and federal requirements.

Stat. Auth.: ORS 184.616, 184.619 & 377.735
Stats. Implemented: ORS 377.735

Hist.: HWY 1-1989, f. & cert. ef. 5-2-89; TO 7-2001, f. & cert. ef. 12-13-01; HWD 1-2009, f. & cert. ef. 2-20-09; HWD 11-2014, f. & cert. ef. 12-19-14

734-060-0190
Illuminated, Digital, or LED Signs Other than Outdoor Advertising Signs

(1) By statute, all signs visible to state highways are subject to state sign prohibited sign and safety regulations. No signs visible to a state highway, other than official traffic control signals or devices, may include moving or rotating parts or lights. Signs may not be made to resemble an official traffic signal or device and they may not have lights that project onto the roadway or impede the sight of traveling motorist.

(2) In interpreting ORS 377.715 and 377.720, signs visible to a state highway, other than official traffic control signals or devices, may not:

(a) Be illuminated by flashing lights or a light that varies in intensity;

(b) Have a display surface that creates the appearance of movement;

(c) May not operate at an brightness level of more than 0.3 foot-candles over ambient light, nor intensity greater than the luminance indicated in the table 1, as measured perpendicular to the face of the billboard at the indicated measurement distance for a designated sign dimension: [Table not included. See ED. NOTE.]

(3) Newly constructed signs visible to a state highway, other than official traffic control signals or devices, must be:

(a) Equipped with a light sensor that automatically adjusts the intensity of the sign illumination according to the amount of ambient light, and;

(b) Designed to freeze the display in one static position, display a full black screen or turn off in the event of a malfunction.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 377.710 & 377.720
Stats. Implemented: ORS 377.720
Hist.: HWD 11-2014, f. & cert. ef. 12-19-14

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Health Licensing Office, Board of Direct Entry Midwifery Chapter 332

Rule Caption: Requirement that LDM's must disclose whether they've obtained the initial legend drugs and devices training.
Adm. Order No.: DEM 1-2014(Temp)
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 1-2-15 thru 6-27-15
Notice Publication Date:
Rules Amended: 332-015-0030, 332-025-0020, 332-025-0110
Subject: During analysis and alignment of statutes and HB 2997 the Health Licensing Office (HLO) found that the Board of Direct Entry Midwifery (Board) does not have authority to require education and training for the initial Legend Drugs and Devices upon application of an initial license. Prior to January 1, 2015 it was required that at the time of application the applicant provide proof of completing the 40 hours of legend drugs and devices training. As of January 1, 2015 completion of the initial legend drugs and devices training is not required until annual renewal of a license.

The temporary rule requires each licensed direct entry midwife disclose to each patient whether or not they have received the initial legend drugs and devices training. The rule also requires the disclosure is documented within the patient records of care.

The Board and HLO are encouraging applicants to obtain the 40 hours of initial Legend Drugs and Devices Training prior to application and submit proof of completion at time of application which will be filed with annual renewal records.
Rules Coordinator: Samantha Patnode—(503) 373-1917

332-015-0030
Application Requirements Direct Entry Midwifery License

An individual applying for licensure to practice direct entry midwifery must:

(1) Meet the requirements of OAR 331 division 30.

(2) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application and license fees.

(3) Submit current certification in cardiopulmonary resuscitation for adults, neonates and infants.

(4) Submit a written plan for emergency transport for mother or newborn pursuant to OAR 332-025-0020.

(5) Submit satisfactory evidence of having current CPM credential from NARM; and

(6) Pursuant to ORS 687.420, participation as an assistant at 25 deliveries, 25 deliveries for which the applicant was the primary birth attendant, participation in 100 prenatal care visits, 25 newborn examinations, and 40 postnatal examinations. The applicant must have provided continuity care for at least 10 of the primary birth attendant deliveries, including four prenatal visits, one newborn examination and one postpartum exam. Of these 50 births, at least 25 deliveries must have taken place in an out-of-hospital setting and 10 births must have occurred within the two years or 24 months preceding the date of application.

(7) If there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

(8) If the applicant received the initial Legend Drugs and Devices Training within 12 months of applying for licensure the applicant must submit proof of receiving the training on a form prescribed by the agency.

(9) If the applicant has not received the initial Legend Drugs and Devices Training at the time of application this information must be disclosed to each patient on the patient disclosure form required under OAR 332-025-0020.

Stat. Auth.: ORS 687.420 & 687.485
Stats. Implemented: ORS 687.420 & 687.485
Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 1-2014(Temp), f. 12-31-14, cert. ef. 1-2-15 thru 6-27-15

332-025-0020
General Practice Standards

Pursuant to ORS 687.480, licensees must comply with the following practice standards when, advising the mother and in rendering antepartum, intrapartum and postpartum care.

(1) A licensee must include the designation LDM after the licensee's name when completing birth certificates; and

(2) As a condition of license renewal, licensees must participate in peer review meetings in their regions or in conjunction with professional organization meeting(s), which must include, but are not limited to, the discussion of cases and obtaining feedback and suggestions regarding care. Documentation must be made on forms approved by the board. Licensees must participate in peer review according to the following schedule:

(a) Once per year if the licensee served as the primary birth attendant at 40 or fewer births during the license year; or

(b) Twice per year if the licensee served as the primary birth attendant at more than 40 births during the license year.

(c) For the purpose of reporting peer review, if there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

(d) If a licensee has not attended any births, participation in peer review is not required. Licensee must attest to not having attended any births on a form prescribed by the agency.

(3) In accordance with ORS 687.480 and 687.493 a licensee must maintain equipment necessary to: assess maternal, fetal and newborn well being; maintain aseptic technique; respond to emergencies requiring immediate attention; and to resuscitate mother and newborn when attending an out-of-hospital birth.

(4) A licensee must dispose of pathological waste resulting from the birth process in accordance with the Department of Human Services Public Health Division under OAR 333 Division 056. Provisions include:

(a) Incineration, provided the waste is properly containerized at the point of generation and transported without compaction to the site of incineration; or

(b) Burial on private property if burial of human remains on such property is not prohibited or regulated by a local government unit at the designated site.

(5) Licensees must dispose of biological waste materials that come into contact with blood and/or body fluids in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that protects the licensee, mother, baby, and others who may come into contact with the material during disposal. Biological wastes may also be incinerated or autoclaved in equipment dedicated to treatment of infectious wastes.

(6) Licensees must dispose of sharps that come into contact with blood or bodily fluids in a sealable, (puncture proof) container that is strong enough to protect the licensee, mother, baby and others from accidental cuts or puncture wounds during the disposal process.

(7) Sharps must be placed into appropriate containers at the point of generation and may be transported without compaction to a landfill having an area designed for sharps burial or transported to an appropriate health care facility equipped to handle sharps disposal, provided the lid of the con-

tainer is tightly closed or taped to prevent the loss of content and the container is appropriately labeled.

(8) Licensees must maintain a "patient disclosure form" providing current and accurate information to prospective clients. Licensees must provide the mother with this information. This statement must include, but is not limited to:

(a) Philosophy of care;

(b) Midwifery training and education;

(c) Clinical experience;

(d) Services provided to mother and baby;

(e) Types of emergency medications and equipment used if appropriate;

(f) Responsibilities of the mother and her family;

(g) Fees for services including financial arrangements;

(h) Malpractice coverage;

(i) Risk assessment criteria as listed in OAR 332-025-0021;

(j) Whether the licensee has obtained the 40 hours of initial Legend Drugs and Devices Training required under OAR 332-020-0010; and

(k) Signature of mother and date of signature documenting discussion and receipt of patient disclosure form.

(9) A licensee must maintain a plan for emergency transport and must discuss the plan with the mother. The plan must include, but is not limited to:

(a) Place of transport;

(b) Mode of transport;

(c) Provisions for hospital and physician support including location and telephone numbers; and

(d) Availability of private vehicle or ambulance including emergency delivery equipment carried in the vehicle.

(10) Signature of mother and date of signature documenting discussion of emergency transport plan must be placed in the mother's record.

(11) A licensee must maintain complete and accurate written records documenting the course of midwifery care as listed under OAR 332-025-0110.

(12) A licensee must maintain current certification in cardiopulmonary resuscitation for adults and infants and current certification in neonatal resuscitation.

(13) All births must be registered with the Department of Human Services Vital Records Section, as provided in ORS Chapter 432.

Stat. Auth.: ORS 676.605, 676.615, 687.480 & 687.485

Stats. Implemented: ORS 676.605, 676.615, 687.480 & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-00; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11; DEM 5-2011, f. & cert. ef. 9-26-11; DEM 1-2014(Temp), f. 12-31-14, cert. ef. 1-2-15 thru 6-27-15

332-025-0110

Records of Care Practice Standards

(1) The LDM must maintain complete and accurate records of each mother and baby.

(2) Records mean written documentation, including but not limited to:

(a) Midwifery care provided to mother and baby;

(b) Demographic information;

(c) Medical history;

(d) Diagnostic studies and laboratory findings;

(e) Emergency transport plan defined under OAR 332-025-0020;

(f) Informed consent and risk information documentation under OAR 332-025-0120;

(g) Health Insurance Portability and Accountability Act (HIPAA) releases;

(h) Description of the reasoning for transfer of care defined under OAR 332-025-0021 of the mother and baby;

(i) Documentation of all consultations and recommendations from health care providers as defined under OAR 332-015-0000;

(j) Documentation of all consultations and recommendations regarding non-absolute risk factors from Oregon licensed health care providers as defined under OAR 332-025-0021;

(k) Documentation of any declined procedures under OAR 332-025-0022;

(l) Documentation of termination of care under OAR 332-025-0130; and

(m) Documentation that the patient disclosure form, including information regarding completion of the 40 hours of initial Legend Drugs and Devices Training, has been received by the mother under OAR 332-025-0020.

(3) Records must be maintained for no less than seven years. All records are subject to review by the agency.

(4) All records must be legibly written or typed, dated and signed.

(5) All records must include a signature or initial of the LDM.

Stat. Auth.: ORS 487.485 & 676.615

Stats. Implemented: ORS 687.425, 687.480, 687.485, 676.606 & 676.607

Hist.: DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11; Renumbered from 332-025-0070 by DEM 5-2011, f. & cert. ef. 9-26-11; DEM 1-2014(Temp), f. 12-31-14, cert. ef. 1-2-15 thru 6-27-15

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Rule Caption: Align rules with legislative changes including mandatory licensing, continuing education and traditional midwife requirements.

Adm. Order No.: DEM 2-2014

Filed with Sec. of State: 12-31-2014

Certified to be Effective: 1-1-15

Notice Publication Date: 11-1-2014

Rules Adopted: 332-015-0025, 332-025-0125

Rules Amended: 332-015-0000, 332-015-0030, 332-020-0000, 332-020-0010

Rules Repealed: 332-015-0070, 332-030-0000

Subject: During the 2013 Legislative Session House Bill 2997 passed requiring mandatory licensure for direct entry midwives as of January 1, 2015 unless the individual met one of the statutory exemptions including the traditional midwifery exemption. As part of their statutory exemption a traditional midwife may perform direct entry midwifery services if a disclosure statement is provided to each patient on a form prescribed by the Board of Direct Entry Midwifery. The disclosure statement must include but is not limited to the person stating they do not possess a professional license issued by the state; the person's education and qualification have not been reviewed by the state; that the person is not

authorized to carry and administer potentially lifesaving medications.

HB 2997 also requires all applicants for licensure must be a certified professional midwife through the North American Registry of Midwives (NARM).

Align rules with statutory authority to allow for continuing education for legend drugs and devices upon renewal rather than a requirement for initial licensure. Increase the number of standard continuing education hours from 30 hours to 35 hours every two years and allow licensed direct entry midwives to obtain continuing education hours from online sources.

Rules Coordinator: Samantha Patnode—(503) 373-1917

332-015-0000

Definitions

The following definitions apply as used in OAR 332-015-0000 through 332-030-0000.

(1) "Agency" means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) "Antepartum" means the period of time before the onset of labor.

(3) "Board" means, pursuant to ORS 687.470, the entity that advises the agency on matters relating to the practice of direct entry midwifery, and determines practice standards, education and training, and provides consultation to the agency on all disciplinary issues in accordance with ORS 687.405 to 687.495.

(4) "Baby" means the fetus and the newborn.

(5) "Consultation" means a dialogue for the purpose of obtaining information or advice from a health care provider by phone, written notes, or in person, which may include, but is not limited to identification of and recommendation regarding management of maternal or fetal conditions.

(6) "Fetal distress" is a condition in which the fetus demonstrates progressive and irresolvable clinical signs of compromise, which may include, but are not limited to, abnormal fetal movement; loss of heart tone variability; non-reassuring fetal heart rate deceleration patterns such as late decelerations; and non-reassuring changes in fetal heart baseline rate.

(7) "Informed Consent" means the consent obtained following a thorough and easily understood explanation of the information to the mother or

the mother's guardian. Refer to OAR 332-025-0120. Informed consent used in OAR 332-025-0125 does not apply to this definition.

(8) "Intrapartum" means the period of time from the onset of labor through the birth of the placenta.

(9) "LDM" means licensed direct entry midwife.

(10) "MANA" means the Midwives Alliance of North America.

(11) "MEAC" means the Midwifery Education and Accreditation Council.

(12) "NARM" means the North American Registry of Midwives.

(13) "Peer review" means the discussion of cases with other health care providers and students for the purpose of obtaining and providing suggestions regarding care.

(14) "Postpartum" means the period of time immediately after and up to eight weeks following the birth of the baby.

(15) "Prenatal" means the period of time from conception to the onset of labor.

(16) "Primary birth attendant" means the midwife who assumes direct responsibility for mother and baby care.

(17) "Sharps" means items that includes needles, intravenous tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(18) "Traditional Midwife" Pursuant to ORS 687.415 an individual who is acting as a traditional midwife, does not use legend drugs and devices, does not advertise as a midwife, and provides the required disclosures to clients may practice direct entry midwifery in this state without a license to practice direct entry midwifery.

Stat. Auth.: ORS 687.485
Stats. Implemented: ORS 183.450(7) & 687.485
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 5-2011, f. & cert. ef. 9-26-11; DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

332-015-0025
Direct Entry Midwifery License

(1) A direct entry midwife, licensed under ORS 687.420, may perform direct entry midwifery services defined under 687.405.

(2) A direct entry midwife license is good for one year and becomes inactive on the last day of the month one year from the date of issuance.

Stat. Auth.: ORS 676.615, 676.616, 687.410, 687.415, 687.420, 687.425, 687.445, 687.480 & 687.493
Stats. Implemented: ORS 676.615, 676.616, 687.410, 687.145, 687.420, 687.425, 687.445, 687.480 & 687.493
Hist.: DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

332-015-0030
Application Requirements Direct Entry Midwifery License

An individual applying for licensure to practice direct entry midwifery must:

(1) Meet the requirements of OAR 331 division 30.

(2) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application and license fees.

(3) Submit current certification in cardiopulmonary resuscitation for adults, neonates and infants.

(4) Submit a written plan for emergency transport for mother or newborn pursuant to OAR 332-025-0020.

(5) Submit satisfactory evidence of having current CPM credential from NARM; and

(6) Pursuant to ORS 687.420, participation as an assistant at 25 deliveries, 25 deliveries for which the applicant was the primary birth attendant, participation in 100 prenatal care visits, 25 newborn examinations, and 40 postnatal examinations. The applicant must have provided continuity care for at least 10 of the primary birth attendant deliveries, including four prenatal visits, one newborn examination and one postpartum exam. Of these 50 births, at least 25 deliveries must have taken place in an out-of-hospital setting and 10 births must have occurred within the two years or 24 months preceding the date of application.

(7) If there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

(8) If the applicant received the Initial Legend Drugs and Devices Training within 12 months of applying for licensure the applicant must submit proof to receiving the training on a form prescribed by the agency. The applicant is not required to attest to having taken the Initial Legend Drugs and Devices Training upon first renewal pursuant to OAR 332-020-0010(10).

Stat. Auth.: ORS 687.420 & 687.485
Stats. Implemented: ORS 687.420 & 687.485
Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 1-2014(Temp), f. 12-31-14, cert. ef. 1-2-15 thru 6-27-15; DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

332-020-0000
License Issuance and Renewal

(1) LICENSING: A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the issuance and renewal of a license, and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) LICENSE RENEWAL: To avoid delinquency penalties, license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

(a) Renewal application form;

(b) Payment of required renewal fee;

(c) Attestation of having obtained required continuing education under OAR 332-020-0010, on a form prescribed by the agency, whether license is current or inactive.

(d) Evidence of current certification in cardiopulmonary resuscitation for adults and infants;

(e) Evidence of current certification in neonatal resuscitation;

(f) Evidence of having completed peer review documented on a form prescribed by the agency pursuant to OAR 332-040-0000; and

(g) Submit a copy of individual MANAstats practice report pursuant to OAR 332-020-0017.

(3) INACTIVE LICENSE RENEWAL: A license may be inactive for up to three years. When renewing after entering inactive status, the licensee must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 332-020-0020;

(c) Attestation of having obtained required continuing education under OAR 332-020-0010, on a form prescribed by the agency, whether license is current or inactive.

(d) Evidence of current certification in cardiopulmonary resuscitation for adults and infants;

(e) Evidence of current certification in neonatal resuscitation; and

(f) Evidence of having completed peer review on a form prescribed by the agency pursuant to 332-025-0020.

(g) Submit a copy of individual MANAstats practice report pursuant to OAR 332-020-0017.

(4) EXPIRED LICENSE: A license that has been inactive for more than three years is expired and the licensee must reapply and meet the requirements listed in OAR 332-015-0030.

Stat. Auth.: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485 & 687.493
Stats. Implemented: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485 & 687.493
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 1-2008, f. 9-15-08 cert. ef. 10-1-08; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 5-2011, f. & cert. ef. 9-26-11; DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

332-020-0010
Continuing Education

(1) Standard Continuing Education Renewal Requirements: To maintain licensure an LDM must complete 35 clock hours of continuing education related to services listed in ORS 687.405, cultural competency, patient charting, ethics, communication, or professional development every two years from the date of initial licensure and every two years thereafter.

(2) Legend Drugs and Devices Initial Continuing Education: Upon first renewal or to purchase and administer legend drugs and devices an LDM must successfully complete the 40 clock hours of instruction in an approved legend drugs and devices program approved by the Board. The program is composed of theory, hands-on practice, and skills testing for competency which must include the following:

(a) Eight clock hours in Pharmacology covering drugs listed in ORS 687.493, OAR 332-026-0010 and 332-026-0020;

(b) Four clock hours of administration of medications through injection;

(c) Four clock hours in advanced treatment of shock;

(d) 10 clock hours in intravenous therapy;

(e) Four clock hours in neonatal resuscitation; and

(f) 10 clock hours in suturing.

(3) Legend Drugs and Devices Continuing Education Renewal Requirements: To maintain licensure an LDM must complete eight and a half clock hours of legend drugs and devices (LDD) continuing education,

every two-years and attest on renewal application. The LDD continuing education must include components listed under subsection (1) of this rule with the exception of neonatal resuscitation which is required for annual renewal. Components must include the following:

(a) One hour in pharmacology;

(b) One half hour in administration of medications through injection;

(c) One hour in advanced treatment of shock;

(d) Three hours in intravenous therapy; and

(e) Three hours in suturing.

(4) In accordance with ORS 687.425 a licensee who has attended fewer than five births in the previous year is required to take an additional ten hours of continuing education in subjects listed in subsection (1)(a)(A) of this rule during the next annual renewal cycle.

(5) Continuing Education listed in subsection (1) or (3) may be obtained through online courses, attendance at lectures, sessions, courses, workshops, symposiums seminars or other presentations offered by:

(a) Institutions or programs accredited by a federally recognized accrediting agency;

(b) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(c) An organization offering continuing medical education opportunities, including but not limited to, Accreditation Council for Continuing Medical Education, MEAC accredited or pre-accredited schools and the Oregon Midwifery Council.

(d) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (1) or (2) of this rule.

(6) Continuing education relating to subject matter listed in subsection (1) of this rule may also be obtained through research, authorship or teaching, provided that no more than half the required hours be in research, authorship or teaching.

(7) Up to nine clock hours of continuing education relating to subject matter listed in subsection (1) of this rule may be completed through self-study. Documentation substantiating the completion of continuing education through self-study must be submitted on forms provided by the agency and must include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion, and duration in hours in accordance with subsection (8) of this rule;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(8) Obtaining and maintaining proof of participation in continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 332-020-0015(3).

(9) Documentation of participation in continuing education requirements must be maintained for a period of two years following renewal, and must be available to the agency upon request.

(10) Hours of continuing education that are obtained in excess of the minimum requirements listed in this rule will not be carried forward as credit for the subsequent license renewal reporting cycle.

(11) For the purpose of this rule continuing education must include periods of continuous instruction and education, not to include breaks, rest periods, travel registration or meals.

(12) A copy of Board-approved curriculum objectives for LDD program is available at the Health Licensing Office or on the office website at http://www.oregon.gov/ohla/Pages/index.aspx. Payment of administrative fees may be required. Refer to OAR 331-010-0030 for applicable public record request fees.

Stat. Auth.: ORS 676.615, 687.425 & 687.485

Stats. Implemented: ORS 676.615, 687.425 & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 2-2008(Temp), f. 9-15-08 cert. ef. 10-1-08 thru 3-30-09; DEM 1-2009, f. 3-31-09, cert. ef. 4-1-09; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 1-2013(Temp), f. 7-10-13, cert. ef. 7-12-13 thru 1-8-14; DEM 2-2013, f. 12-30-13, cert. ef. 1-1-14; DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

332-025-0125

Disclosure for Patients of Traditional Midwives

(1) Pursuant to ORS 687.415 an individual who is acting as a traditional midwife, does not use legend drugs and devices, does not advertise as a midwife, and provides the required written disclosures to clients, may practice direct entry midwifery in this state without a license to practice direct entry midwifery.

(2) Pursuant to ORS 687.415 a traditional midwife is prohibited from the following:

(a) Advertising that the person is a midwife; and

(b) Use of legend drugs and devices pursuant to ORS 687.493.

(3) A traditional midwife must disclose the following information to clients both verbally and in writing when the mother initially comes into care using a Board adopted form that is located on the Office's website at http://www.oregon.gov/OHLA/DEM/pages/index.aspx:

(a) That the person does not possess a professional license issued by the state;

(b) That the person's education and qualification have not been reviewed by the state;

(c) That the person is not authorized to carry and administer potentially lifesaving medications;

(d) That the risk of harm or death to a mother or newborn may increase as a result of the information described ORS 687.415(2)(b)(C) (i) and (ii);

(e) A plan for transporting the client to the nearest hospital, as defined in ORS 442.015, if a problem arises during labor or childbirth;

(f) That the client will not have recourse through a complaint process;

(g) The types of midwives who are licensed by the state; and

(h) Signature from the patient that they have been given the information both in writing and verbally.

(4) The traditional midwife must also obtain a patient signature when the mother initially comes into care on the Board's adopted form containing the information described in subsection (3). A traditional midwife must retain a copy of the signed form in the patient record and make it available to HLO upon request.

Stat. Auth.: ORS 676.615, 676.616, 687.410, 687.415, 687.420, 687.425, 687.445, 687.480 & 687.493

Stats. Implemented: ORS 676.615, 676.616, 687.410, 687.145, 687.420, 687.425, 687.445, 687.480 & 687.493

Hist.: DEM 2-2014, f. 12-31-14, cert. ef. 1-1-15

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Creates single teacher registration scheme for career schools. Creates new rule for competency schools.

Adm. Order No.: HECC 6-2014

Filed with Sec. of State: 12-18-2014

Certified to be Effective: 12-18-14

Notice Publication Date: 9-1-2014

Rules Adopted: 715-045-0220

Rules Amended: 715-045-0012, 715-045-0200

Subject: Corrects references in OAR 715-045-0012 and clarifies language in OAR 715-045-0012 and 715-045-0200.

Transfers requirements for obtaining a cosmetology teacher registration and cosmetology school teacher training program requirements from OAR 715-045-0200 to 715-045-0012. Eliminates requirement that cosmetology school teachers obtain 30 hours of commission-approved continuing education units every three years. Transfers competency-based cosmetology school requirements from OAR 715-045-0200 and places them into a new rule, OAR 715-045-0220.

Amends career school teacher provisions of OAR 715-045-0012 to create a unified scheme for overseeing and registering individuals teaching in licensed career schools. Establishes that registrations issued to career school teachers will expire after three years and must be renewed.

Directs career schools to provide notice to the commission if the school has employed a substitute teacher within 14 days of hiring the substitute teacher.

Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-045-0012

Personnel

(1) A career school shall establish, publish, and enforce specific written policies that set standards for the staff's:

(a) Professional performance and conduct;

(b) Evaluation; and

(c) Continuing education.

(2) Career schools shall employ as teachers only those individuals who are registered with the Commission and who meet the applicable requirements of this rule. All applications for teacher registration shall:

(a) Be recorded on forms provided by the Commission;

(b) Indicate the specific subjects the prospective teacher will teach;

(c) Be signed by the prospective teacher and a director at the school; and

(d) Be accompanied by relevant official transcripts, letters, and documents that confirm that the teacher meets the minimum requirements listed in subsections (3) and (4) of this rule.

(3) Individuals applying for registration as career school teachers must:

(a) Be at least 18 years of age.

(b) Hold all licenses, permits, certificates, or other credentials, as well as successfully pass any examinations, required for employment in the field in which the applicant proposes to prepare students to enter by the state in which the school is located. In limited circumstances, the Executive Director may grant a waiver from this requirement upon receipt of a written request from the school showing that a credential issued by another state would be accepted as an equivalent by the state in which the school is located.

(b) Have graduated from high school as evidenced by a photocopy of the applicant's high school diploma, a high school transcript indicating graduation, or a foreign equivalent. As an alternative, the applicant may show evidence of a General Education Development (GED) certificate. The Executive Director may grant a waiver to this requirement if the applicant provides a postsecondary degree or diploma, or a transcript indicating graduation, from a postsecondary program which would typically require completion of high school, or an equivalent course of study, as a condition of admission.

(c) Have a minimum of one year of work experience and one year of combined training and work experience, for a total of two years of work experience and training within the past five years. If a credential or qualifying examination is required for employment in the field by the state in which the school is located, the applicant must have at least one year of experience as a credentialed worker in that field. The amount of work experience must equal either 1,875 hours in a single year or 3,750 hours in the past four years.

(d) Pay the applicable registration fee specified in OAR 715-045-0007.

(e) Notwithstanding the work experience and training requirement specified in paragraph (c) of this subsection, an applicant applying for registration to teach hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice at a career school offering cosmetology programs may qualify to teach by completing a commission-approved:

(A) 1,000 hour cosmetology teacher training program offered by a licensed career school, if the applicant possess a valid credential from the Health Licensing Office; or

(B) 200 hour cosmetology teacher training program, if the applicant taught hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice in another state whose licensing requirements are less than those established by the State of Oregon, or if the applicant's commission-issued teacher registration expired three or more years ago.

(4) Career schools offering programs in hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice may use individuals who are not registered teachers for the purpose of providing specialty training on behalf of a product manufacturer or supplier. Such specialty trainers, also known as resource persons, may not provide more than a total of:

(a) 340 hours of instruction in a hair design program;

(b) 270 hours of instruction in a barbering program;

(c) 100 hours of instruction in an esthetics program; or

(d) 100 hours of instruction in a nail technology program.

(5)(a) In emergency situations, not to exceed three months, schools may hire substitute teachers who are the best-qualified persons available. Under no circumstances shall students be allowed to substitute as approved teachers.

(b) Within 14 days of hiring a substitute teacher, a career school must provide written notice to the commission. The notice must include, at a minimum, the substitute teacher's name, telephone number, mailing address, and e-mail address, as well as a list of the programs and courses the substitute teacher will teach and, if applicable, copies of the substitute teacher's credentials. (6) If a school utilizes any form of teacher assistants, aides, or trainees, it shall establish and maintain policies that set forth qualifications, duties, procedures for use of these personnel, and maintain a copy of these policies for review by the commission. Teacher assistants, aides, or trainees:

(A) May not be used as substitutes or replacements for regular teachers;

(B) Must work under the direct supervision of a registered teacher; and

(C) May evaluate students only under direct supervision of a registered teacher.

(7)(a) The school shall have and implement written policies to promote improvement of teacher competency in their fields and in levels of performance in their teaching assignments. A recommended minimum for continuing education is 30 hours during each three-year period.

(b) If a credential or qualifying examination is required for employment in a field by the state in which the school is located, then a registered teacher preparing students to enter that field must comply with any applicable continuing education requirements.

(c) Notwithstanding paragraph (b) of this subsection, registered teachers who teach hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice at a career school offering cosmetology programs must complete a minimum of 30 hours of commission-approved continuing education three years after the date their registration was issued or reissued.

(8) Teacher registrations shall expire three years after the date the registration was issued. To renew a teacher registration, a registered teacher must submit a completed teacher registration form to the commission accompanied by:

(a) The applicable registration fee specified in OAR 715-045-0007;

(b) Evidence that the teacher has satisfied any applicable continuing education requirements;

(c) If applicable, evidence that the teacher possesses a valid credential required by the state in which the school is located for employment in the field the teacher is preparing students to enter; and

(d) A listing of the career schools where the registered teacher has taught during the previous three years, as well as the programs and courses taught by the teacher.

(9) School directors must have at least two years of experience in school or business administration, teaching, or other experience directly related to their duties within the school's organization. The experience must have been obtained within the last five years. Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience. Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks). Qualified persons who do not meet the criteria in section (12) of this rule may be appointed as directors with prior approval by the Superintendent and with a letter as required in subsection (12)(c) of this rule.

(10) Owners and directors, administrators, agents, supervisors, and instructors (hereinafter collectively "employees") subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450 are subject to suspension, revocation, or other discipline if the employee:

(a) Is charged with knowingly making any false statements in the application for a license, registration, or approval;

(b) Is charged with gross neglect of duty; or

(c) Is charged with gross unfitness.

(11) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following acts constitute gross neglect of duty:

(a) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(b) Substantial deviation from professional standards of competency;

(c) Violation of any ethical standard contained in OAR 715-045-0012(13);

(d) Engaging in acts in violation of laws or rules applicable to the profession;

(e) Failure or refusal to respond to questions, to provide information, or to furnish documents to a Department of Education representative pursuant to review, assessment, or investigation; or

(f) Any other statement or act or omission not consistent with personal integrity, ethics, or honesty.

(12) Gross unfitness is any conduct that renders an owner or employee unqualified to perform duties. The following acts constitute gross unfitness:

(a) Convictions of a crime or offense specified in subsection (13) of this rule or engaging in such wrongful acts even in the absence of a conviction;

(b) Commission of fraud, misrepresentation, or deceit;

(c) Commission of unfair, deceptive, or unlawful trade practices as defined in the Oregon Unlawful Trade Practices Act.

(13) No licensed school shall be owned by or employ an individual who is not of good moral character and reputation.

(a) Upon review by the Department, the Superintendent may find a person not to be of good moral character and reputation when the person:

(A) Has been convicted of a felony or a misdemeanor that involves the illegal use, sale or possession of a controlled substance, or that involves any sexual offense, or any violent offense;

(B) Has been convicted of an offense involving fraud or misrepresentation, or has committed fraud, misrepresentation, or deceit or has committed unfair, deceptive, or unlawful trade practices regulated by the Oregon Unlawful Trade Practices Act (ORS 646.605–646.652), or

(C) Is currently subject to suspension or revocation of a commission-issued license or registration.

(b) The Executive Director shall not make a finding that a person is not of good moral character and reputation solely for the reason that the person has been convicted of a crime, but shall consider the relationship of the facts that support the conviction and all intervening circumstances as they relate to the specific occupational standards and requirements; and

(c) If the prospective employee has been convicted of a crime listed in subsection (13) of this rule, the Executive Director shall request a letter of recommendation from the employing school and the individual's most recent employer, parole officer, or other appropriate professional source. The Superintendent shall fully consider such recommendation along with all other supporting materials submitted by the prospective employee. The Superintendent, after reviewing submitted materials, may approve an employee registration on a probationary basis for a period not to exceed one year. Upon completion of the probationary period, if no further violation of subsection (13) has occurred, the probationary status will be removed.

(14) The school shall set minimum expectations and provide training for all instructional personnel and supervisors of instructional personnel in:

(a) Curriculum and Instruction — including the educator's competent application of:

(A) The school approved curriculum; and

(B) Effective teaching strategies; and

(b) Supervision and Evaluation of Students — including the educator's responsibility to:

(A) Record progress of individual students;

(B) Evaluate student performance; and

(C) Use effective classroom management;

(c) Ethics — including the educator's responsibility to:

(A) Know, respect, and obey all policies of the school;

(B) Exemplify personal integrity, ethics, and honesty;

(C) Keep student information confidential; and

(D) Avoid exploiting students for personal profit or advantage.

Stat. Auth.: ORS 345.080, 345.325, & 345.400
Stats. Implemented: ORS 345.325 & 345.400
Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; Renumbered from 581-045-0012 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 6-2014, f. & cert. ef. 12-18-14

715-045-0200
Barbering, Hair Design, Esthetics, and Nail Technology

In addition to OAR 581-045-0001 through 581-045-0190, schools of barbering, hair design, esthetics, and nail technology shall comply with this rule and 581-045-0210.

(1) Minimum hourly training requirements:

(a) For hair design, 1,450 hours;

(b) For barbering, 1,100 hours;

(c) For esthetics, 250 hours;

(d) For nail technology, 350 hours; and

(e) In addition to the programs listed above, students are required to successfully complete the following requirements once:

(A) Safety and sanitation, 150 hours; and

(B) Career development, 100 hours.

(2) Individual progress records must be regularly maintained for the purpose of monitoring each student's progress through the instructional program and verifying actual hours of instruction in each certifiable classification. Once a student completes the minimum hourly training requirements specified in subsection (1) of this section and the school's own program completion requirements, the school shall administer a Department-approved written and practical exam prior to the student taking the State Board exam for licensure. The time required to take the practical exam shall be included as part of the contracted program hours included in the tuition cost.

(3) The Commission, with the assistance of a curriculum committee, will develop minimum standards for each certificated program or any combination of programs.

(4) No student shall perform any task in a clinic lab without first having achieved verifiable minimum competence. The following hours are recommended as a guideline for classroom and laboratory instruction that students should experience prior to any assignment in the clinic lab:

(a) Hair design, 160 hours;

(b) Esthetics, 40 hours;

(c) Nail technology, 40 hours; and

(d) Barbering, 100 hours.

(5) The instructional program shall determine the type of assignments students will receive in the clinic lab. Clinic lab assignments should, as nearly as possible, reflect the emphasis of the student's current and cumulative theory and laboratory experiences. Schools shall establish a minimum and maximum number of clinic activities for each type of task required in the clinic lab. These minimums/maximums should show a comparable distribution of activities reflective of industry practice. Only when students have completed the minimum in all areas can they be assigned to clinic activities in excess of the maximums.

(6) With the exception of a commission approved cosmetology teacher training program, a school shall not conduct both fixed-hour and student competency-based training programs in the same school facility concurrently unless the school is in transition from one training program to another. The Commission may set a time limit in which the transition must be completed.

(7) No school shall enroll a student wishing to transfer hours from a school of barbering, hair design, esthetics, and nail technology in Oregon or out-of-state without first receiving an official transcript properly signed or sealed directly from the previous schools. A school may admit a student on a temporary basis without receiving an official transcript. In no event should a student be considered a graduate until an official transcript from all prior schools is in the graduating school's student file. Schools shall evaluate and grant appropriate credit for any education and training students received at state regulated postsecondary schools.

(8) Schools shall validate only their own hours of instruction provided a student but not any hours provided by other schools.

(9) Upon receipt and evaluation of official transcripts from schools previously attended:

(a) Schools shall give full credit for hours earned within the last ten years; and

(b) Schools may grant credit for hours earned prior to the last ten years, if approved by the Superintendent.

(10) No school shall deny a student a record of hours earned. A record of hours does not infer or include the official transcript.

(11) The school shall have as a minimum the following staff present at all times:

(a) 1–15 students present — one approved teacher;

(b) 16–30 students present — two approved teachers; and

(c) One additional approved teacher for each additional 20 students or part thereof. Teachers must be certified in all areas they teach and supervise. When only one teacher is present at the school, clinic lab operations, and classroom instruction shall not occur simultaneously. The lone teacher shall conduct and supervise one or the other but not both concurrently. Teachers who supervise the clinic lab and/or approve student practical performance must be certified in all areas they supervise or approve;

(d) Exceptions to the student to teacher ratios in (a)–(c) may be granted for theory/lecture classes only. All hands-on practical lab and clinic lab classes are required to maintain specified staffing ratios.

(12) The minimum teaching staff, as set forth in these rules, shall not perform administrative or financial aid or any other non-instructional duties during the time that the clinic lab and classroom instruction are taking place concurrently.

(13) A teacher or student teacher shall not perform any services in the school during school hours except for teaching purposes.

(14) All services performed by students shall take place under the supervision and direction of a certified teacher.

(15) Premises shall be used during school hours only for instructing students and teacher trainees in barbering, hair design, esthetics, or nail technology.

(16) The school shall provide a minimum of 2,800 square feet of total floor space to be allocated as follows; one work station for each of the first twenty students; one additional work station for every five students in excess of twenty; and, where hair design is taught, one shampoo bowl for every five work stations. The executive director must approve any exception to this requirement. Classroom and clinic space are in compliance with OAR 715-045-0022. Schools must comply with ORS 345.240 relative to accessibility of programs for persons with handicapping conditions.

(17) The executive director may approve a facility of less than 2,800 square feet of floor space for schools if the school presents a written plan as to how the number of students will be served in the space provided. The plan must include how the school meets the entire model curriculum standards.

(18) The school shall be separated from adjoining rooms used for another business or for domestic purposes, by means of walls or substantial partitions extending from floor to ceiling; all doors leading to the school from the aforesaid adjoining rooms must be kept closed. Access to the school shall be provided by means of an outside or separate entrance, or from a public passageway in a public building.

(19) Each school shall include the names of all actively employed (full-time or part-time) approved teachers on its annual license renewal application.

(20) A licensed school of barbering, hair design, esthetics, or nail technology may offer a teacher training program if it complies with the following:

(a) Courses of teacher training for instruction in barbering, hair design, esthetics, and nail technology may be offered only in a school of hair design licensed under the provisions of ORS Chapter 345 or Mt. Hood Community College. Courses of study must be submitted to the Superintendent for approval;

(b) The Standard Course of Study shall require 1,000 hours of instruction that shall include the following:

(A) Preparation and use of lesson plans,

(B) Use of audiovisual and other instructional aids,

(C) Development and administration of tests and evaluation of test results,

(D) Evaluation and recording of student progress, and recording of attendance,

(E) Observation of practical demonstrations,

(F) Assisting with practical demonstrations,

(G) Setting up and performance of practical demonstrations, and

(H) Practice teaching.

(c) The Superintendent shall approve teacher-training programs of 200 hours for:

(A) Teachers whose certification has lapsed more than three years, and

(B) Teachers from other states whose licensing requirements are less than the minimum requirements for Oregon.

(d) The school shall:

(A) Maintain daily records of the teacher trainee's attendance, and the subject matter covered; and

(B) Conduct and record the results of periodic evaluations of each teacher trainee.

(e) The school may evaluate and give up to 500 hours credit for professional teaching experience or any academic training received in a community college or institution of higher education when that academic training contributes to achievement of the total approved Standard Course of Study. The Superintendent may grant a waiver to the 500 hour limitation if sufficient evidence is submitted;

(f) A school shall not have more than three approved teacher trainees at one time. The school shall designate who shall have the principal supervisory responsibility for the student in the teacher-training program. Each trainee, when in the clinic lab, must be under direct supervision of an approved teacher with a minimum of two years teaching experience;

(g) Teacher trainees shall evaluate students only under the direct supervision of a certified teacher; and

(h) Teacher training students must be registered with the Superintendent prior to commencement of their training.

Stat. Auth.: ORS 345.400
Stats. Implemented: ORS 345.400
Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 32-2012(Temp), f. 11-7-12, cert. ef. 11-9-12 thru 5-7-13; Administrative correction, 5-22-13; Renumbered from 581-045-0200 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 6-2014, f. & cert. ef. 12-18-14

715-045-0220
Untitled

As an alternative to the minimum hourly training requirements specified in OAR 715-045-0200, a proficiency-based training program that is self-paced may be approved by the Executive Director when the school has developed written requirements which it administers for graduation including:

(1) Clearly defined student performance objectives that measure levels of performance at each level of instruction for each skill/task and knowledge required for students to successfully pass the appropriate practitioner certificate examination and successfully and safely perform on members of the public all services allowed in the certificate classifications;

(2) Individual progress records maintained for the purpose of monitoring each student's progress through the instructional program and recording/verifying actual hours of instruction and performance achievement by each student;

(3) A curriculum design, which the Superintendent determines to be comparable to the Board adopted model curriculum, showing a logical progression of academic and practical training experiences leading to the levels of student performance required for graduation and certification;

(4) The identification of specific levels of competence to be achieved by each student prior to any clinic lab experience that will ensure students have achieved sufficient skill and knowledge to successfully and safely perform assigned tasks on members of the general public;

(5) A diagnosis of each student's beginning level of competency and a prescriptive instructional program for specific competency completion with projected timelines resulting in an estimated program completion date; a copy to be given to the student on commencement of the program and on file in the student's personal file. Revisions to the prescriptive program must be based on recorded performance evaluations and as a result of school/student negotiation. Copies of revisions must be given to the student and on file in the student's academic file;

(6) Assurances that the instructional program will determine the type of assignments that students receive for the clinic lab; that, as nearly as possible, the clinic lab assignments reflect the emphasis of the student's current and cumulative theory and laboratory experiences;

(7) School catalogs and/or student enrollment agreements, that show the average time for students to complete the requirements for the various certificate programs during the previous reporting period;

(8) An annual report at the time of relicensing to the Department showing the actual total hours of instruction received by each student who has completed or left the school during the previous reporting period;

(9) Assurances that no student's competency-based prescriptive training program will be significantly altered or regulated in any way, once the student and the school administration have signed a competency-based agreement; and

(10) When the school informs a student that he/she is competent, the student may elect to leave the school with a diploma at that time or stay in school until he/she has been trained for an amount of time equal to the training hours listed in section (1) of this rule, and no additional tuition may be charged. The student shall notify the school of his/her decision within two weeks of notice of competency.

Stat. Auth.: ORS 345.325 & 345.400
Stats. Implemented: ORS 345.400
Hist.: HECC 6-2014, f. & cert. ef. 12-18-14

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Rule Caption: Amend civil penalty rule to reflect ORS 345.992, 345.995 and 2013 OL Ch. 643.
Adm. Order No.: HECC 7-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 9-1-2014
Rules Amended: 715-045-0190
Subject: In 2013, the legislative assembly amended ORS 345.005 to allow the Higher Education Coordinating Commission (commission) to retain reasonable costs related to the investigation and assessment of a civil penalty from the penalties assessed. ORS 345.995 also established factors the commission must consider when determining whether to assess a civil penalty and the amount of that penalty.

The proposed amendments will implement the provisions of ORS 345.995 which allow the commission to retain costs resulting from an investigation that leads to the assessment of civil penalties. The proposed amendments will also eliminate the tiered civil penalty structure from OAR 715-045-0190, and instead rely upon the factors

listed in ORS 345.995 when assessing a civil penalty. The proposed amendments also clarify that the commission will assess civil penalties for violations of administrative rules adopted pursuant to ORS 345.010 to 345.450, as provided in ORS 345.992.

Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-045-0190
Civil Penalties

(1) Amendments to OAR 715-045-0001 through 715-045-0210 must be implemented by the schools within 90 days after the effective date of the amendments. Failure to implement rule changes within 90 days shall subject a school to civil penalties.

(2) The commission may assess a civil penalty of $500 per violation of ORS 345.010 to 345.450, or any administrative rules adopted pursuant to 345.010 to 345.450.Before imposing a civil penalty under this subsection, the commission shall consider the factors established in 345.995.

(3) Each act in violation of ORS 345.010 to 345.450, or any administrative rules adopted pursuant to 345.010 to 345.450 shall constitute a separate violation. The imposition of penalties under this section shall be in addition to, and does not preclude the imposition of, any other penalties for the same act or conduct pursuant to any other provision of law.

(4) Failure to pay civil penalties within 30 days of the service of a final order imposing penalties, unless stayed pending appeal by subsequent order of the Executive Director or a court of competent jurisdiction, may result in revocation of license to operate a school.

(5) The commission may retain reasonable costs related to the investigation and assessment of a civil penalty from civil penalties imposed under ORS 345.995 and this section. In support of its decision to retain civil penalties, the commission shall provide an accounting of the costs incurred during its investigation and the assessment of civil penalties, including but not limited to staff time, mailing costs, and attorney fees.

Stat. Auth.: ORS 345.992 & 345.995
Stats. Implemented: ORS 345.995
Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 7-2009, f. & cert. ef. 6-29-09; Renumbered from 581-045-0190 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 7-2014, f. & cert. ef. 12-18-14

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Rule Caption: Establish new student data reporting requirements for career schools.
Adm. Order No.: HECC 8-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 9-1-2014
Rules Amended: 715-045-0018
Subject: The Higher Education Coordinating Commission (commission) is proposing to establish new student data reporting requirements for licensed career schools. These new requirements will increase the amount of student data that career schools collect and report to the commission as part of each school's annual license renewal application. Oregon's educational goal is to ensure that by 2025 40% of Oregonians have a bachelor's degree or higher, 40% have an associate's degree or post-secondary credential, and 20% have a high school diploma. ORS 351.009. To determine the number of students being served by Oregon's licensed career schools, the number of graduates those schools are contributing to the state's so-called "middle 40 goal," and the demographics of those students, the commission must increase and improve its career school student data collection efforts. The increased data collection will also allow the state to better track students as they progress from secondary to post-secondary schools, and from postsecondary school to employment.

The proposed rule includes general provisions for protecting student data.

To reduce the regulatory burden on career schools, the proposed rule eliminates a document previously required as part of each school's enrollment process. All of the information printed on that document, aside from a statement informing students that their enrollment agreements were binding contracts, was also printed on the enrollment agreement and in the school catalog. The binding contract statement has been added to the enrollment agreement.

Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-045-0018
Recordkeeping

(1) Schools must furnish each prospective student, and have evidence of receipt acknowledged by student signature at the time of enrollment, with the following items:

(a) A copy of the school's most recent catalog that complies with OAR 581-045-0019, with any supplements and correction sheets;

(b) Completion and relevant program performance measures, including but not limited to placement data, as required by accrediting agencies, or certification or state licensing examination passage rates, or placement data for students enrolled in the program for the last two years;

(c) A program outline for the program(s) in which the student may potentially enroll that details the program outcomes, broken down by course including, the core abilities and individual course competencies addressed by the program(s); and

(d) Upon request of the student, a copy of or the web address for the Oregon Revised Statutes and Oregon Administrative Rules that govern Private Career Schools.

(2)(a) At the time of enrollment, a career school shall collect the following personally identifiable information from each enrolled student:

(A) First and last name;
(B) Mailing address;
(C) County of residence;
(D) State of residence;
(E) Telephone number;
(F) E-mail address;
(G) Social Security number;
(H) Date of birth;
(I) Gender;
(J) Veterans status;
(K) Disability status;
(L) National origin; and
(M) Ethnicity or race.

(b) Schools shall use the following categories to collect students' ethnicity or race data:

(A) Hispanic or Latino;
(B) Native American or Alaskan Native;
(C) Asian;
(D) Native Hawaiian or Pacific Islander;
(E) African American; and
(F) Caucasian.

(c) If a student refuses to release his or her Social Security number, the school may assign an alternative identification number.

(d) Students must provide their own personally identifiable information. Career school personnel may not enter personally identifiable information regarding a student that was derived from personal observations.

(e) Career schools must record for the name of the program in which each student has enrolled and the date on which each student graduated, withdrew, or was expelled from the school. This information must be reported to the commission at least once each year.

(3)(a) Each career school must adopt policies and procedures, and employ adequate safeguards, to protect their students' personally identifiable information from misuse, inadvertent disclosure, or theft.

(b) Career schools may not disclose students' personally identifiable information to anyone other than:

(A) The student, or the student's parent or guardian, if the student is a minor;
(B) The Higher Education Coordinating Commission; or
(C) Other local, state, or federal officials as allowed by law.

(c) Schools shall maintain students' personally identifiable information in accordance with applicable laws, including but not limited to the Oregon Consumer Identity Theft Prevention Act, ORS 646A.600 to 646A.628, and any rules adopted pursuant to ORS 646A.600 to 646A.628.

(4) Career schools shall maintain the student information specified in subsection (2) of this section in an Excel spreadsheet, or other electronic format identified by the commission. This information must be delivered to the Commission at least once a year, and may be included with the school's license renewal application, and may be delivered on a USB drive, CD or DVD, or via other means identified by the commission.

(5)(a) Upon enrollment, the student shall receive a copy of his or her enrollment agreement, signed by the student and a school official. The enrollment agreement must include a statement, located above the signature line, informing the student that the enrollment agreement is a binding contract. Thethe actual enrollment agreement will be retained by the school;

(b) The school shall maintain the student's signed enrollment agreement as part of the student's file.

(6) Schools shall maintain a file for each student that must include:

(a) A statement signed by the student at the time of enrollment certifying receipt of all materials indicated in sections (1) and (5) of this rule (or copies of materials where indicated);

(b) The student's actual signed enrollment agreement;

(c) A copy of the student's signed statement acknowledging receipt of any books, supplies, kits, or other substantial materials required to participate in the instructional program that are issued to the student subsequent to enrollment. The statement must be itemized, indicate the fee paid by the student for the materials (if any), and identify the date the materials were received by the student. If not all materials are issued at the same time, the student must initial the date of receipt each time materials are issued; alternatively, the materials list may contain a statement to the effect that certain indicated materials will be issued at the time of instruction when they are to be used. By initialing the statement, students acknowledge that indicated materials are to be received at a date that corresponds with the sequencing of the instructional program.

(d) If an orientation is offered by the school on or before the first day of classes, an indication of attendance signed by the student on that orientation day acknowledging that school policies and procedures were explained and student questions were answered.

(e) A copy of the student's signed payment plan if separate from the enrollment agreement;

(f) A schedule of anticipated student payments due, payments made, and copies of receipts for all payments;

(g) All documentation regarding third party training contracts, e.g., NAFTA, Vocational Rehabilitation, etc.,

(h) Written progress reports that shall include at a minimum information on how the student is progressing in areas such as classroom attendance and performance (but not used as final grades) updated at appropriate intervals;

(i) Progress reports may be maintained by electronic means provided there is an electronic system in place with sufficient security protocols to allow for student access while maintaining confidentiality. A log of student access activity must be placed in the student file at intervals corresponding with the stated progress report intervals to demonstrate that the student is reviewing the progress report and receiving appropriate feedback and improvement planning;

(j) Copies of any documentation required for admission, or a written evaluation of required documentation, when appropriate, signed by a member of the school admissions staff explaining scoring of documentation and evaluation criteria;

(k) A copy of the results of any enrollment evaluation or examination or evaluation of transfer credit or competencies, and any calculations used to determine awarding of credit or hours; and

(l) Record of operations completed, if applicable, with dates and scores received;

(7) The school must maintain each student's file for a minimum of 3 years from the date the student graduated, withdrew, or was expelled.

(8) Schools shall maintain a record of each student's attendance, updated weekly. This record shall include each student's dates and hours of attendance.

(9) Upon the student's satisfactory completion of instruction, schools shall:

(a) Issue an appropriate certificate or diploma; and

(b) Issue appropriate educational transcripts that shall include, but are not limited to:

(A) School name and location;

(B) Student's name;

(C) First and last date of attendance;

(D) Specific program(s) taken;

(E) Clock and credit hours (if applicable);

(F) Grade for each course;

(G) Name of accrediting agency, if the school is accredited;

(H) Statement indicating the school maintains transcripts for a minimum of 25 years; and

(I) Signature of the appropriate school official with school seal (if any) and date of issue.

(10) Schools shall maintain and issue transcripts as follows:

(a) Store transcripts in a safe, vault, or file having a minimum one-hour fire-safe rating unless duplicate records are kept in a safe location outside the school building. The address of locations outside the school building must be on file with the Department;

(b) Keep transcripts of all former students that include the information described in subsection (5)(b)(A)—(H) of this rule for a period of no less than 25 years from date of termination of enrollment. Transcripts must be stored under the same conditions as described in paragraph (a) of this subsection;

(c) Make a student's records available to the student upon request. Availability of records shall comply with the "Family Educational Rights and Privacy Act" (Public Law 93-380 as amended by Public Law 93-568). The educational institution shall respond within a reasonable period of time, but not more than 45 days after receipt of the request;

(d) Deliver to the Superintendent all permanent student transcripts for safekeeping if the school should cease to operate. The Superintendent will maintain the transcripts of all closed schools. If available, certified copies of the transcripts will be provided, when a written request signed by the student, is received at the Department. A non-refundable search fee of $10 must accompany the request; and

(e) A school may withhold an official transcript, certificate of completion, or diploma if the student has any outstanding debt owed to the school. Forms, letters, questionnaires, or other material printed or written for the purpose of debt collection must clearly and conspicuously state that they are used for the purpose of attempting to collect a debt or attempting to obtain information concerning a debtor.

Stat. Auth.: ORS 345.325
Stats. Implemented: ORS 345.325
Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 16-2010, f. 11-15-10, cert. ef. 1-1-11; Renumbered from 581-045-0018 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 8-2014, f. & cert. ef. 12-18-14

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Rule Caption: Establish new and increase existing fees for the administration and oversight of private career schools
Adm. Order No.: HECC 9-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 9-1-2014
Rules Amended: 715-045-0007
Subject: The Higher Education Coordinating Commission (commission) is proposing to adopt new fees and increase some existing fees to recover costs associated with oversight of private career schools and providing services to licensees, career school faculty, and former students. The proposed rule would raise the fee for conducting a search of a closed career school's transcripts and, if any are found, providing copies to former students from $10 to $12, and processing teacher registrations from $0 for non-cosmetology school teachers, and from $50 for an initial registration and $25 for a renewal for cosmetology school teachers, to $75.

The proposed rule would establish a new fee of $25 for verifying a teacher's registration, training, or experience; $7 for processing teacher-trainee registrations; $25 for responding to requests to determine whether an out-of-state cosmetology license applicant is qualified to take a cosmetology license exam; $100 for processing career school license renewal applications or semi-annual Tuition Protection Fund payments submitted after the applicable due date; and $200 for conducting an investigation of a career school when the commission determines that the school has violated any provision of ORS 345.010 to 345.450 or any rule adopted pursuant to ORS 345.010 to 345.450. The proposed rule would also establish a new fee, not to exceed $5,000, to recover the costs of engaging an individual or business for assistance in conducting an investigation of a career school.
Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-045-0007
Fees

(1)(a) Before issuing a career school license under ORS 345.010 to 345.450, the Executive Director shall collect a nonrefundable, annual license fee based on the fee schedule in ORS 345.080.

(b) For purposes of ORS 345.080, "tuition income" means "gross tuition income," as that term is defined at OAR 581-045-0001 and 715-045-0007.

(2) Applications for a new license must be accompanied by a nonrefundable application fee, based on the fourth step of the fee schedule in ORS 345.080.

(3) The commission shall collect a nonrefundable fee of $12 to conduct a search of a closed career school's transcripts and, if any are found, provide four copies of a former student's transcript. If more than four copies are requested, the requestor shall pay a nonrefundable fee of $2 for each additional copy.

(4) Teacher registration applications shall be accompanied by a nonrefundable application fee of $75.

(5) Requests to verify a teacher's registration, training, or experience shall be accompanied by a nonrefundable verification fee of $25.

(6) Applications for teacher trainee registrations must be accompanied by a nonrefundable registration fee of $7.

(7) Requests to determine whether an out-of-state applicant for a cosmetology license is qualified to take a test of the Board of Cosmetology shall be accompanied by a nonrefundable review fee of $25.

(8) The commission shall collect a nonrefundable fee of $100 for processing:

(a) Career school license renewal applications submitted after the applicable due date established in OAR 715-045-0062. This fee shall be in addition to any civil penalties that may be assessed for renewal applications that are not submitted in compliance with the requirements of OAR 715-045-0062 and any other applicable rules.

(b) Payments to the Tuition Protection Fund established under ORS 345.110 after the due dates established in OAR 715-045-0029. This fee shall be in addition to any civil penalties that may be assessed for payments to the Fund that are not submitted in compliance with the requirements of OAR 715-045-0029 and any other applicable rules.

(9) The commission shall collect the annual, nonrefundable cosmetology school inspection fee of $100 established in ORS 345.450 from schools teaching hair design, barbering, esthetics, or nail technology. This inspection fee shall be transferred to the Health Licensing Office.

(10)(a) The commission shall assess a nonrefundable fee of $200 for investigations of career schools when the commission determines that a career school has violated any provision of ORS 345.010 to 345.450, or any rule adopted pursuant to ORS 345.010 to 345.450.

(b) If the commission must engage an individual or business, such as a forensic accountant or an attorney, for assistance in conducting an investigation, then the commission shall assess a nonrefundable fee in an amount equal to the investigative costs incurred by the commission; however, the amount of the fee may not exceed $5,000.

Stat. Auth.: ORS 345.080
Stats. Implemented: ORS 345.080
Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0002, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; Renumbered from 581-045-0007 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 9-2014, f. & cert. ef. 12-18-14

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Rule Caption: Clarifies instructional program requirements for Private Career Schools.
Adm. Order No.: HECC 10-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 8-1-2014
Rules Amended: 715-045-0009
Subject: The Higher Education Coordinating Commission (Commission) is proposing to clarify instructional program requirements for Private Career Schools, and outlining that the Commission will develop instructional design guidelines and time frames to assist existing (licensed) schools so as to bring all approved programs into compliance.
Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-045-0009
Instructional Programs

(1) All schools shall:

(a) Offer programs of quality, content and duration, that are based on specific industry standards or an occupational task analysis, and with appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the programs' occupational objectives; and

(b) Operate programs evaluated by appropriate program advisory committees as defined in OAR 715-045-0013, unless a program is exempt from the advisory committee requirement under 715-045-0014. Materials for exempt programs will be reviewed by the executive director to determine the adequacy and appropriateness of the instructional methodology. The school shall prepare instructional design documentation for review, evaluation and analysis that includes:

(A) A program outcome summary for each program offered that clearly states the program title, duration, educational or professional technical objective(s) of the program, and the job(s) title and level for which the training prepares the student. In addition the program outcome summary must include the following information:

(i) A description of the target population for enrollment;

(ii) The entrance requirements and prerequisite knowledge or skills needed to enroll;

(iii) Any state license exams or other certifications the student will be prepared to take upon successful completion of the program;

(B) A list of the industry standards or the occupational task analysis used to formulate the instructional design;

(C) The associated competencies taught in the program for each standard or occupational task;

(D) A list of core abilities incorporated throughout the program;

(E) Learning plans, which shall include:

(i) Core abilities and competencies taught in the lesson;

(ii) Learning objectives for each competency;

(iii) Learning activities that achieve the learning objectives;

(iv) Sequence of learning activities;

(v) Performance assessment statement(s);

(F) The performance assessment(s) plan(s) for each competency, which shall include directions for the student and the evaluator, the performance conditions and criteria, and checklists, rubrics, or scoring guides used;

(G) A program map. For programs comprised of multiple courses, the program map shall indicate the number of clock hours allowed for each course and the topics within each course. For programs not comprised of specific courses, the program map shall indicate each unit or major topic within the program, the number of clock hours for each unit or major topic and the specific subjects within each unit or major topic.

(i) If the school is approved to use a credit hour measurement, an explanation of how credit hours convert to clock hours must also be submitted;

(ii) If the instructional program is self-directed or measured in lessons, the total number of clock hours for the program and how that number is derived, the total number of lessons, and the maximum time allowed for completion of the program must be submitted.

(H) A teaching syllabus for each course in each program. If a program does not contain specific courses or the program is of short duration, then the teaching syllabus shall be for the program in its entirety. The content of the syllabus shall contain the elements in the sample provided by the commission;

(I) The grading system, standards of satisfactory progress, attendance and performance required of students in the program, as referenced in OAR 715-045-0019;

(c) Submit additional documentation that includes:

(A) A description of the instructional area or facility with space allocations and dimensions, equipment placement, and teaching stations for each program appropriately indicated;

(B) A description of the admission requirements and process for evaluating those requirements, including the criteria or tests used in the selection and placement of enrollees for the program;

(C) Labor market information, updated every two years with data no more than three years old, as described in OAR 715-045-0006(11); and

(D) A written placement assistance plan for assisting graduates in efforts to obtain employment in the field for which training was offered, or a related field, as described in OAR 715-045-0019.

(2) The program advisory committee shall submit to the school its analysis of the quality, content, duration and curriculum sequencing of the program of study, instructional materials, equipment and facilities provided to prepare the student in skills currently necessary for entry level employment in the occupation for which the program was designed:

(a) Program material prepared for the program advisory committee, as prescribed in subsection (1) (b) and (c) of this rule, will be filed with the executive director;

(b) The executive director may review:

(A) The school's program development procedures;

(B) The program advisory committee's involvement in program development; and

(C) The program advisory committee's analysis of a program as specified in subsection (2).

(c) The executive director may accept or reject the findings of the program advisory committee's analysis of the adequacy of the program.

(3) The executive director will review the program outcome summary, program map, core abilities, standards, competencies and syllabus for each program to determine the adequacy of the instructional design. The executive director's written approval of these elements is required prior to the commencement of any marketing, recruitment, enrollment or instructional activities.

(4) The executive director may request and review other instructional design materials outlined in subsections (1) and (2) of this rule, before granting approval, including learning plans, performance assessment plans, and learning activities.

(5) Licensed schools wishing to add a new program must:

(a) Prepare the instructional design elements described in subsections (1) and (2) of this rule for each new program requested and make them available to the commission upon request; and

(b) Prepare and submit for approval the elements described in subsection (3) of this rule for each new program requested.

(6) The commission will develop instructional design guidelines and timeframes to assist schools licensed prior to the implementation of this rule in bringing all approved programs into compliance.

Stat. Auth.: ORS 345.080
Stats. Implemented: ORS 345.080
Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 19-2010, f. 12-17-10, cert. ef. 1-1-11; Renumbered from 581-045-0009 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 10-2014, f. & cert. ef. 12-18-14

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Rule Caption: Enables commission to enter into and administer state reciprocity and interstate agreements; assess fees.
Adm. Order No.: HECC 11-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 11-1-2014
Rules Amended: 715-010-0015
Subject: The Higher Education Coordinating Commission (commission) is amending OAR 715-010-0015 to enable the commission to enter into and administer any interstate agreements, such as the State Authorization Reciprocity Agreement (SARA), including reviewing applications, administering agreements for participation in SARA between the commission and educational institutions, and establishing a biennial fee for participating institutions based on an educational institution's total enrolled full-time equivalent (FTE).
Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-010-0015
Delegating the Duties

This rule is for the purpose of delegating the duties, functions, and powers of the Higher Education Coordinating Commission with respect to degree authorization, degree validation, administer interstate agreements and review of new academic programs under ORS 348.594 to 348.615 and 348.992 to the manager of these programs and activities.

(1) Degree authorization shall be the responsibility of the manager, who shall have final authority with regard to:

(a) Authorization of post-secondary schools to offer academic degree programs (under Oregon Administrative Rules 583-030);

(b) Authorization of approved degree-granting schools to offer academic programs leading to a certificate or diploma;

(c) Termination of any activities related to higher education by an education entity not authorized to offer degrees and post-secondary academic programs in Oregon and ineligible for exemption from authorization under Oregon statutes.

(2) Degree validation under OAR 583-050 shall be the responsibility of the manager, who shall have final authority with regard to:

(a) Validation of claims of degree possession and determination of appropriate degree use under Oregon law;

(b) Termination of substandard or fraudulent degree activities;

(c) Termination of activities of diploma mills operating in or from Oregon;

(d) Termination of any operation in or from Oregon of post-secondary accrediting bodies that are not recognized by the United States Department of Education.

(3) Administration of any interstate agreements, such as the State Authorization Reciprocity Agreement (SARA) shall be the responsibility of the executive director, which includes but is not limited to::

(a) Reviewing applications of and entering into agreements with educational institutions for authorization to participate in SARA;

(b) Administering agreements for participation in SARA between the commission and an educational institution; and

(c) Establishing application fees. The commission imposes a biennial fee on any educational institution applying to operate under or participate in SARA. The fee is based on an educational institution's total enrolled full-time equivalent (FTE) as shown in the Integrated Postsecondary Education Data System and is as follows:

(A) Under 2,500 Enrolled FTE: $3,000.

(B) 2,500 to 9,999 Enrolled FTE: $5,000.

(C) 10,000 or more Enrolled FTE: $7,000.

Stat. Auth.: 2012 SB 242, 2014 SB 1525 & 2014 HB 4018
Stats. Implemented: 2012 SB 242
Hist.: HECC 1-2013, f. & cert. ef. 8-21-13; HECC 5-2014(Temp), f. & cert. ef. 10-15-14 thru 4-13-15; HECC 11-2014, f. & cert. ef. 12-18-14

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Oregon Department of Education
Chapter 581

Rule Caption: Modifies Extended Diploma requirements for high school graduation
Adm. Order No.: ODE 44-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date: 11-1-2014
Rules Amended: 581-022-1133
Subject: Under current law, a student may earn an extended diploma if they have demonstrated an inability to maintain grade level achievement due to significant learning, instructional, or medical barrier. Additionally, a student must have participated in an alternative assessment beginning no later than grade six and lasting for two or more assessment cycles, or have an illness or injury that occurs after grade eight that changes the student's ability to achieve at grade level and that results in the student participating in alternative assessments. Some students have Individual Education Programs that exempt them from assessments because their team has determined that it is no longer useful for the student to take them. Others that have attended private schools or were homeschooled in their early school years did not have access to the alternative assessment and so could not meet the requirements in the statute. Finally, students who move to Oregon from out of state face the same issues meeting the requirements of the law. The result has been that many students who would otherwise have been eligible for an extended diploma have instead been prevented from taking advantage of the extended diploma option due to their unique circumstances. Instead many of these students accept an alternative certificate and because there are no standards for earning an Alternative Certificate, students are counted as non-completers.

HB 2913 and ORS 329.451 eliminates the requirement that students must have completed multiple alternate assessments in order to be eligible for an extended diploma. These changes also eliminate confusing language in the eligibility requirements. Specifically, the changes enable a student to qualify for an extended diploma if they have a documented history of inability to maintain grade level achievement due to significant learning and instructional barriers, a medical condition that creates a barrier to achievement, or a change in ability to participate in grade level activities due to a serious illness or injury that occurred after grade eight and eliminates the requirements related to the alternative assessment. Further, the new rules require school districts or public charter schools to provide information about extended diplomas to parents on an annual basis.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1133
Extended Diploma

(1) Definitions.

(a) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be consid-

ered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A school district or public charter school shall award an extended diploma to a student who satisfies the requirements of this rule.

(3) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations.

(4) A school district or public charter school may award an extended diploma to a student only upon the consent of the parent or guardian of the student, or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the extended diploma is awarded.

(a) If student is under 18, consent must be received from the parent or guardian.

(b) If the student is under age 18 and emancipated, consent must be received from the student.

(c) If the adult student is 18 or older, consent must be received from the student.

(d) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(5) To be eligible for an extended diploma, a student must:

(a) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of Science;

(D) Three credits of history, geography, economics, or civics;

(E) One credit of health;

(F) One Credit of physical education; and

(G) One credit of arts or a second language; and;

(b) Have a documented history of:

(A) An inability to maintain grade level achievement due to significant learning and instructional barriers;

(B) A medical condition that creates a barrier to achievement; or

(C) A change in the student's ability to participate in grade level activities as a result of a serious illness or injury that occurred after grade eight.

(6)(a) A student shall have the opportunity to meet the requirements of an extended diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(b) A student may complete the requirements for an extended diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an extended diploma.

(B)A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an extended diploma in less than three years.

(7) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an extended diploma at each high school in the school district or at the public charter school.

(b) Beginning in grade five or beginning after a documented history described in section (5)(b) above has been established, annually provide to the parents or guardians of a student who has the documented history, described above, information about the availability of an extended diploma and the requirements for the extended diploma.

(c) A school district or public charter school may not deny a student who has the documented history described in subsection (1)(a) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.

(8)(a) A student who receives an extended diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school; or,

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education;

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team decides that the student will not access the total number of hours of instruction and services to which the student has access, the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent, or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(9) School districts and public charter schools shall make extended diplomas as required by ORS 329.451 and this rule first available to students during the 2009–2010 school year.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.451
Hist.: ODE 21-2009, f. & cert. ef. 12-10-09; ODE 3-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 44-2014, f. & cert. ef. 12-17-14

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Rule Caption: Diploma Requirements
Adm. Order No.: ODE 45-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date: 11-1-2014
Rules Amended: 581-022-1130, 581-022-1133, 581-022-1134, 581-022-1210
Subject: Changes term "second language" to "world languages" in kindergarten through grade 12 education statutes. Reflects changes made by 2013 legislation.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1130
Diploma Requirements

(1) Each district school board and public charter school with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2) to (11) of this rule and all local school district requirements as described in district school board policies or all public charter school requirements as described in the policies or charter of the public charter school.

(2) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or World Languages — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Except as provided in section (4) of this rule, Unit of Credit Requirements for students graduating on or after July 1, 2009 and who were first enrolled in grade 9 prior to the 2008–2009 school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or World Languages — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(4) Notwithstanding sections (2) and (3) of this rule, for students who began grade 9 during the 2005–2006 school year and who attended school during the 2006–2007, 2007–2008 and 2008–2009 school years, the unit of credits required for graduating is as described in section (2) of this rule if the student graduates prior to July 1, 2010.

(5) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2008–2009 or 2009–2010 school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or World Languages — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(6) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2010–2011 school year or first enrolled in grade 9 in any subsequent school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics —3 (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or World Languages — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(7) Each student shall demonstrate proficiency in essential skills adopted by the State Board of Education as provided in OAR 581-022-0615;

(8) School districts shall develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7 through 12 with adult guidance. The plan and profile shall be reviewed and updated periodically (at least annually) and be supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(9) Each student shall develop an education plan and build an education profile.

(a) Each student shall develop an education plan that:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Sets goals to prepare for transitions to next steps identified in section (7)(b);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsection (a) (A), (B) and (C) of this rule that includes but is not limited to:

(i) Appropriate coursework and learning experiences;

(ii) Identified career-related learning experiences; and

(iii) Identified extended application opportunities.

(b) Through the education profile each student shall:

(A) Monitor progress and achievement toward standards including:

(i) Content standards;

(ii) Essential skills;

(iii) Extended application standard; and

(iv) Other standards where appropriate (e.g. industry standards).

(B) Document other personal accomplishments determined by the student or school district.

(C) Review progress and achievement in subsection (b)(A) and (B) of this subsection at least annually.

(10) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(11) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-0102);

(12) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1134.

(13) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award an extended diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1133.

(14) Notwithstanding sections (1) to (11) of this rule and as provided in OAR 581-022-1135, schools districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular diploma, modified diploma or extended diploma.

(15) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) Notwithstanding subsection (a) of this section, a student may satisfy the requirements of sections (2)(6) of this rule in less than four years. If the school district or public charter school has the consent of the student's parent or guardian, a school district or public charter school shall award a diploma to a student upon request from the student, if the student satisfies the requirements for the diploma that apply to the student based on the date of graduation of the student or the school year when the student first enrolled in grade 9, as applicable.

(c) If a school district or public charter school has the consent of a student's parent or guardian, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.

(d) The requirement for obtaining the consent of a student's parent or guardian under subsections (b) and (c) of this section does not apply to a student who is:

(A) Emancipated pursuant to ORS 419B.550 to 419B.558; or

(B) 18 years of age or older.

(e) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(f) With any modification of the attendance requirements for graduation, school district and public charter school staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district or public charter school guidelines and the wishes of parents and guardians.

(16) A school district or public charter school shall ensure that students have access to the appropriate resources to achieve a diploma at each high school in the school district or at the public charter school.

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 326.051, 329.451 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07; ODE 18-2008, f. & cert. ef. 6-27-08; ODE 5-2009(Temp), f. 6-29-09, cert. ef. 6-30-09 thru 12-22-09; ODE 20-2009, f. & cert. ef. 12-10-09; ODE 45-2014, f. & cert. ef. 12-17-14

581-022-1133
Extended Diploma

(1) Definitions.

(a) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc., which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A school district or public charter school shall award an extended diploma to a student who satisfies the requirements of this rule.

(3) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations.

(4) A school district or public charter school may award an extended diploma to a student only upon the consent of the parent or guardian of the student, or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the extended diploma is awarded.

(a) If student is under 18, consent must be received from the parent or guardian.

(b) If the student is under age 18 and emancipated, consent must be received from the student.

(c) If the adult student is 18 or older, consent must be received from the student.

(d) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(5) To be eligible for an extended diploma, a student must:

(a) Have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers or have a documented history of a medical condition that creates a barrier to achievement; and

(b)(A) Participate in an alternate assessment beginning no later than grade six and lasting for two or more assessment cycles; or

(B) Have a serious illness or injury that occurs after grade eight, that changes the student's ability to participate in grade level activities and that results in the student participating in alternate assessments.

(c) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of science;

(D) Three credits of history, geography, economics or civics;

(E) One credit of health;

(F) One credit of physical education; and

(G) One credit of the arts or a world language;

(6)(a) A student shall have the opportunity to meet the requirements of an extended diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(b) A student may complete the requirements for an extended diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an extended diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an extended diploma in less than three years.

(7) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an extended diploma at each high school in the school district or at the public charter school.

(b) Beginning in grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an extended diploma and the requirements for the extended diploma.

(c) A school district or public charter school may not deny a student who has the documented history described in subsection (1)(a) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.

(8)(a) A student who receives an extended diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(9) School districts and public charter schools shall make extended diplomas as required by ORS 329.451 and this rule first available to students during the 2009-2010 school year.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.451
Hist.: ODE 21-2009, f. & cert. ef. 12-10-09; ODE 3-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 44-2014, f. & cert. ef. 12-17-14; ODE 45-2014, f. & cert. ef. 12-17-14

581-022-1134
Modified Diploma

(1) Definitions. As used in this rule:

(a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.

(b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.

(c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.

(d) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) On or after July 1, 2009, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma even with reasonable modifications and accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies. In addition, on or after July 1, 2009, a district school board or public charter school governing board may only award a modified diploma to a student who meets the eligibility criteria specified in section 3 of this rule.

(3)(a) Except as provided in paragraph (c) or (d) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) A student shall have the opportunity to meet the requirements of a modified diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for a modified diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for a modified diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction.

(D) The consent may not be used to allow a student to satisfy the requirements for a modified diploma in less than three years.

(d) A school district or public charter school may not deny a student who has the documented history described in paragraph (a) of this subsection the opportunity to pursue a diploma with more stringent requirements than a modified diploma for the sole reason that the student has the documented history.

(e) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(f) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(g) Notwithstanding paragraph (c) and (d) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student's school team must include an adult student, parent/guardian of the student.

(b) A school district or public charter school may award a modified diploma to a student only upon the consent of the parent or guardian of the student or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the modified diploma is awarded.

(A) If student is under 18, consent must be received from the parent or guardian.

(B) If the student is under age 18 and emancipated, consent must be received from the student.

(C) If the adult student is 18 or older, consent must be received from the student or guardian.

(D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(c) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified

diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.

(d) Beginning in grade five, school district and public charter schools shall annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of a modified diploma and the requirements for the modified diploma.

(e) A student's school team may formally decide to revise a modified diploma decision.

(f) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit from high school if the documented history of the student described in section (3) of this rule has changed.

(5) Unit of credit requirements for students graduating with a modified diploma:

(a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:

(A) English Language Arts — 3;

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;

(E) Health Education — 1;

(F) Physical Education — 1; and

(G) Career Technical Education, The Arts or World Languages (units may be earned in any one or a combination) — 1.

(b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:

(A) Additional core credits described in paragraph (a) of this section;

(B) Professional technical education;

(C) Electives; and

(D) Career development.

(c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.

(d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.

(e) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.

(f) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.

(6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through a continuum of instruction beginning at basic skills and progressing through high level skills.

(7) A school district or public charter school shall award a regular diploma under OAR 581-022-1130 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma; however, required core courses taken under modified conditions must be retaken under standard conditions to be counted toward a regular diploma.

(8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.

(9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-1130.

(10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.

(11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.

(12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;

(13) Each student receiving a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(14)(a) A student who receives a modified diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team or school team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(i) School districts and public charter schools shall ensure that students have on-site access to the appropriate resources to achieve a modified diploma at each high school in the school district or at the public charter school.

(15)(a) The unit of credit requirements in section (5) of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2007.

(b) If a student entered 9th grade prior to July 1, 2007, the student's team shall decide whether the student must meet the unit of credit requirements in section (5) of this rule to receive a modified diploma or the unit of credit requirements specified by the school district or public charter school for a modified diploma when the student entered 9th grade. If a student's team decides that a student may receive a modified diploma by meeting the unit of credit requirements required by the district or school when the student entered 9th grade, a school district or public charter school may award a student who entered 9th grade prior to July 1, 2007 a modified diploma if the student meets the unit of credit requirements for a modified diploma specified by the district or school when the student entered 9th grade.

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.451

Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 22-2009, f. & cert. ef. 12-10-09; ODE 4-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 45-2014, f. & cert. ef. 12-17-14

581-022-1210
District Curriculum

(1) Each school district shall provide a planned K–12 instructional program.

(2) The planned K-12 instructional program shall include the following:

(a) Common Curriculum Goals and academic content standards to include:

(A) English;

(B) Mathematics;

(C) Science;

(D) Social Science (including history, geography, economics and civics);

(E) The Arts;

(F) World Languages;

(G) Health Education; and

(H) Physical Education.

(b) Additional Common Curriculum Goals for technology.

(c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards;

(d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards; and

(e) Career education which may include career and technical education.

(3) The school district shall also provide instruction in other areas identified in chapter 581, division 22 of the Oregon Administrative Rules, including:

(a) Infectious diseases, including AIDS/HIV and Hepatitis B;

(b) Prevention education in drugs and alcohol; and

(c) Emergency plans and safety programs.

(4) The school district is also accountable to provide instruction in compliance with requirements set forth in ORS Chapter 336, Conduct of Schools Generally.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.045
Hist.: EB 6-1997, f. & cert. ef. 6-9-97; ODE 7-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05; Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06; ODE 19-2007, f. & cert. ef. 9-10-07; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 45-2014, f. & cert. ef. 12-17-14

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Rule Caption: Compliance with State Standards
Adm. Order No.: ODE 46-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date: 11-1-2014
Rules Amended: 581-022-1610
Subject: The rule specifies that school districts must report compliance with state standards (Division 22) to the Department of Education annually on a form to be provided by the Department. The rule amendments also remove obsolete language from the rule, which is otherwise covered by public records laws.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1610
Operating Policies and Procedures

(1) Districts must comply with the state standards set forth in OAR chapter 581, division 22.

(2) Districts must maintain evidence of compliance with the state standards and make such evidence available upon request.

(3) Districts must report compliance with state standards:

(a) To the community by January 15 of each school year; and

(b) To the Department of Education, annually, on a form to be provided by the Department of Education.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 46-2014, f. & cert. ef. 12-17-14

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Rule Caption: Employment-related transition services for students with disabilities
Adm. Order No.: ODE 47-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date: 10-1-2014
Rules Amended: 581-015-2000, 581-015-2245
Subject: Modifies definition of "sheltered workshop" in OAR 581-015-2000, in order to more fully align this definition with the definition as used by the Department of Human Services, for further clarity and consistency. Also, one additional citation is needed for 581-015-2245 to further align the ODE Administrative Rules in this area to the rules that were promulgated by the Department of Human Services-Office of Employment, pursuant to Executive Order 13-04.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2000
Definitions

The definitions below apply to OARs 581-015-2000–2999, unless the context indicates otherwise.

(1) "Adult student" is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Children with disabilities" or "students with disabilities" means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing impairments, including deafness; intellectual disability; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder, not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments.

(d) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Intellectual Disability" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

(g) "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

(h) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(B) Adversely affects a child's educational performance.

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

(7) "Department" means the Oregon Department of Education.

(8) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.

(9) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(10) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

(11) "General education curriculum" means the same curriculum as for children without disabilities (children without disabilities). For preschool children with disabilities, the term means age-appropriate activities.

(12) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.

(13) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC ¦ 11434a(2).

(14) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(15) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.

(16) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(17) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC ¦ 9101(25).

(18) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(19) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(20) "Native language", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(21) "Parent" means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child,

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or 581-015-2760 for preschool children.

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(22) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(23) "Personally identifiable information" means information as defined in the Family Educational Rights and Privacy Act (FERPA), found at 34 CFR 99.3, which includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child or the child's family;

(c) A personal identifier, such as the child's social security number or student number, or biometric record; and

(d) Other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name;

(e) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or

(f) Other information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(24) "Placement" means educational placement, not social service placement by a state agency.

(25) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

(26) "Private school" means an educational institution or agency not operated by a public agency.

(27) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.

(28) "Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(29) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

(30) "Scientifically Based Research" is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended ESEA.

(31) "School district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.

(32) "Services plan" is defined in OAR 581-015-2450.

(33) "Sheltered Workshop" is a facility based service that congregates more than eight adults with disabilities, including intellectual or developmental disabilities. Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with an intellectual or developmental disability or other disabilities except for service or support staff. However, assessments, instruction, and activities that typically occur in public schools and that are provided either directly or by contract by public school districts, by public charter school, by an Educational Service District, or the Oregon Department of Education, in a school setting, are not considered sheltered workshops.

(34) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gage, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components, or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(35) "Special education" means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability "Special education" includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(36) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(37) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

(38) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(39) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.

(40) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(41) "Ward of the state" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

Stat. Auth.: ORS 343.041, 343.045, 343.155 & 343.223

Stats. Implemented: ORS 343.045, 343.155, 343.223, 34 CFR 300.5, 300.6, 300.8, 300.11, 300.15, 300.19, 300.22, 300.27, 300.28, 300.29, 300.30, 300.34, 300.37, 300.39, 300.42, 300.43 & 300.45

Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0005, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 13-2009, f. & cert. ef. 12-10-09; ODE 12-2011, f. & cert. ef. 10-31-11; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 29-2013, f. & cert. ef. 12-18-13; ODE 41-2014(Temp), f. & cert. ef. 9-8-14 thru 3-7-15; ODE 47-2014, f. & cert. ef. 12-17-14

581-015-2245

Alternative Placements and Supplementary Aids and Services

School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:

(1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions;

(2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement; and

(3) Not include sheltered workshops as defined in OAR 581-015-2000(33) and 407-025-0010(16)

Stat. Auth.: ORS 343.041, 343.045 & 343.055,

Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.115

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995; f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0060, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 29-2013, f. & cert. ef. 12-18-13; ODE 41-2014(Temp), f. & cert. ef. 9-8-14 thru 3-7-15; ODE 47-2014, f. & cert. ef. 12-17-14

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Rule Caption: Judicial Review of State Board Orders of Charter School Appeals

Adm. Order No.: ODE 48-2014

Filed with Sec. of State: 12-17-2014

Certified to be Effective: 12-17-14
Notice Publication Date: 11-1-2014
Rules Amended: 581-026-0065, 581-026-0130, 581-026-0210, 581-026-0505
Subject: Amends rules to provide for current standard of judicial review for charter school orders issued by the State Board of Education.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-026-0065
Appeal Process

(1) An applicant whose resubmitted proposal to start a public charter school is disapproved following reconsideration may request the State Board of Education review the decision of the school district board within 30 days of the disapproval.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the applicant or school district board and establishing timelines for the production of those records;

(c) Requiring the applicant or school district board to respond to written or oral inquiries related to board review; and

(d) Determining at any time during the review process to reject a review request if in the judgment of the Superintendent, the applicant fails to reasonably comply with the administrative review processes of the Superintendent.

(3) The Superintendent may review the decision only to determine whether:

(a) The school district board used the process required OAR 581-026-0060; and

(b) The proposal meets the criteria described in OAR 581-026-0060 (1); and

(c) The reasons stated by the school district board for the denial are valid and align with the criteria described in OAR 581-026-0060 (1).

(4) Following a review described in (9), the State Board of Education may:

(a) Uphold the decision of the school district board to disapprove the resubmitted proposal;

(b) Remand the resubmitted proposal to the school district board for reconsideration if the school district board and the applicant agree to the remand; or

(c) Consider becoming the sponsor of the public charter school if the applicant agrees to the sponsorship.

(5) At the conclusion of the administrative review process the Superintendent shall recommend in writing to the State Board to:

(a) Uphold the decision of the school district board to disapproved the resubmitted proposal; or

(b) Remand the resubmitted proposal to the school district board for reconsideration if the school district board and the applicant agree to the remand; or

(c) Sponsor the public charter school upon the terms in the proposal or upon such other terms specified.

(6) The State Board will consider the recommendation of the Superintendent and any other information it deems relevant and determine based on the requirements of ORS 338 to have the State Board sponsor the public charter school.

(a) If the State Board decides to consider the recommendation of the Superintendent to sponsor the public charter school, the State Board will complete a rigorous evaluation of the proposal as defined in State Board policy.

(7) The decision of the State Board to uphold the school district board decision to disapproved the resubmitted proposal will be based on substantial evidence in the record and will be made within 75 days of receipt by the State Board of the Superintendent's recommendation, unless extended for good cause.

(8) An applicant may seek judicial review of an order of the State Board of Education pursuant to ORS 183.484.

Stat. Auth.: ORS 326.051 & 338.025
Stats. Implemented: ORS 338.075
Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 10-2002, f. & cert. ef. 4-12-02; ODE 5-2004(Temp), f. & cert. ef. 3-15-04 thru 9-1-04; Administrative Correction 9-28-04; ODE 21-2012, f. & cert. ef. 8-1-12; Renumbered from 581-020-0331, ODE 10-2014, f. & cert. ef. 2-19-14; ODE 48-2014, f. & cert. ef. 12-17-14

581-026-0130
Procedure to Waive Certain Provisions of the Charter School Law

(1) A public charter school may petition the State Board of Education for a waiver of any provision of ORS 388. The written petition must specify the reason(s) the charter school is seeking the waiver and any other relevant information.

(2) The public charter school must notify the sponsor if a waiver under this section is being considered. Waivers granted by the State Board to a charter school may require amending the charter under the provisions of OAR 581-026-0100(7).

(3) The State Board of Education, upon receipt of a waiver petition, will review the petition and may grant the waiver upon a showing that approving the waiver would:

(a) Promote the development of programs by providers;

(b) Enhance the equitable access by underserved families to the public education of their choice;

(c) Extend the equitable access to public support by all students; or

(d) Permit the development of high quality programs of unusual cost.

(4) The State Board of Education may not waive any review provision under the Act or any provision under ORS 338.115(1).

Stat. Auth.: ORS 3263.051
Stats. Implemented: Ch. 200, OL 1999(SB 100)
Hist.: ODE 10-2014, f. & cert. ef. 2-19-14; ODE 48-2014, f. & cert. ef. 12-17-14

581-026-0210
Annual Financial Reporting

(1)(a) A public charter school required to comply with ORS 338.035(2)(a)(B) and (C) shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(b) A public charter school that is not required to comply with ORS 338.035(2)(a)(B) and (C) as provided by ORS 338.035(2)(b), must comply with OAR 581-026-0200 and must be included in the audit of the sponsoring district. The district audit for the public charter school must minimally include:

(A) An audit of all accounts and funds associated with the public charter school;

(B) A summary of significant accounting policies, cash and investments, and internal controls; and

(C) A statement of activities and a balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

(2) After an audit, the public charter school shall forward a copy of the annual audit to the Department of Education.

(3) After an audit, the public charter school shall forward the following to the sponsor:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) A balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

Stat. Auth.: ORS 338.025
Stat. Implemented: ORS 338.095
Hist.: ODE 11-2010, f. & cert. ef. 6-30-10; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12; Renumbered from 581-020-0336, ODE 10-2014, f. & cert. ef. 2-19-14; ODE 48-2014, f. & cert. ef. 12-17-14

81-026-0505
Process to Appeal Decision by Sponsor to Terminate Charter

(1) A public charter school governing body may request the State Board of Education review the decision to terminate a charter. The State Board of Education's review shall be limited to the grounds for termination as stated by the school district board or sponsor or a plan to correct deficiencies. Any notice of a request for State Board review must be made in writing and be delivered to the State Board of Education and the business address of the sponsor.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents, and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the public charter school governing body or school district board and establishing timelines for the production of those records;

(c) Requiring the public charter school governing body or school district board to respond to written or oral inquiries related to board review;

(d) Delegating the review function to a hearings officer to hold a contested case hearing under ORS 183. 411 through 183.470 and issue a proposed order; and

(e) Issuing a final order that may be appealed under the provisions of ORS 183.484.

(3) The State Board, or its designee, will where possible, issue its final order within 60 days from the sponsor's notification of intent to terminate as required in ORS 338.105(2). If it is not possible to issue the final order within 60 days, the charter school shall remain open pending issuance of the final order.

(4) The governing body of a public charter school that is closed under the provisions of ORS 338.105(4) may request the State Board of Education, or its designee, to review the decision of the sponsor to terminate the charter and close the public charter school. The State Board of Education, or its designee, will hold a hearing within 10 days of receiving the request for review. The review under this section will be accomplished under the provisions of subsection (2) of this rule and under the timelines set out in ORS 338.105(4) and, to the extent practicable, subsection (3) of this rule.

Stat. Auth: ORS 326.051
Stats. Implemented: ORS 338.105
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02; Renumbered from 581-020-0385, ODE 10-2014, f. & cert. ef. 2-19-14; ODE 48-2014, f. & cert. ef. 12-17-14

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Oregon Health Authority
Chapter 943

Rule Caption: Establishing rules for the development of Cultural Competence Continuing Education Opportunities for Health Care Professionals
Adm. Order No.: OHA 4-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 9-1-2014
Rules Adopted: 943-090-0000, 943-090-0010, 943-090-0020
Subject: These rules create requirements for the Oregon Health Authority to provide resources and support for improving the cultural competence of regulated health care professionals in Oregon and to report to the Oregon State Legislature about the level of participation in cultural competence education among regulated health-care professionals. The rules require the Authority to establish an advisory committee to establish criteria for cultural competence continuing education and recommend continuing education opportunities for adoption. The rules require that the Authority collaborate with designated boards to create a documentation structure and model rules for implementation of continuing education documentation requirements.
Rules Coordinator: Keely L. West—(503) 945-6292

943-090-0000
Purpose

These rules create requirements for the Oregon Health Authority to provide resources and support for improving the cultural competence of regulated health care professionals in Oregon and to report to the Oregon State Legislature as required by 2013 Oregon Law, Chapter 240 about the level of participation in cultural competence education among regulated health-care professionals.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 240
Stats. Implemented:
Hist.: OHA 4-2014, f. 12-18-14, cert. ef. 1-1-15

943-090-0010
Definitions

The following definitions apply to OAR 943-090-0000 through 943-090-0020:

(1) "Authority" means the Oregon Health Authority.

(2) "Continuing Education" means a unit or units of education as defined by each board to which this statute is applicable.

(3) "Cultural competence" means a life-long process of examining values and beliefs and developing and applying an inclusive approach to health care practice in a manner that recognizes the context and complexities of provider-patient communication and interaction and preserves the dignity of individuals, families and communities.

(a) Cultural competence applies to all patients.

(b) Culturally competent providers do not make assumptions on the basis of an individual's actual or perceived abilities, disabilities or traits whether inherent, genetic or developmental including: race, color, spiritual beliefs, creed, age, tribal affiliation, national origin, immigration or refugee status, marital status, socio-economic status, veteran's status, sexual orientation, gender identity, gender expression, gender transition status, level of formal education, physical or mental disability, medical condition or any consideration recognized under federal, state and local law.

(4) "Patient" represents individuals in the broadest spectrum of the roles in health and home care services, including but not limited to: patient, consumer, client, patient representative, resident, and patient family or community.

(5) "Provider" represents individuals in the broadest spectrum of roles in health and home care services, including but not limited to: physicians, nurses, social workers, medical technicians, traditional health workers, and home care and personal support workers.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 240
Stats. Implemented:
Hist.: OHA 4-2014, f. 12-18-14, cert. ef. 1-1-15

943-090-0020
Cultural Competence Resources, Support and Reporting

(1) The Authority, through its Office of Equity and Inclusion, shall create, maintain and make available a list of approved continuing education opportunities for developing cultural competence for regulated health care professionals.

(2) The Authority shall collaborate with legislatively designated boards to:

(a) Create model rule language for affected boards to document cultural competence continuing education.

(b) Create a reporting structure for affected boards to report on the cultural competence continuing education completed by regulated health care professionals.

(3) The Authority shall establish an advisory committee to:

(a) Develop or update criteria for approving cultural competence continuing education opportunities.

(b) Discuss and recommend cultural competence continuing education opportunities to the Authority for approval.

(4) The advisory committee shall include members of communities that experience health disparities because of race, ethnicity or culture.

(5) The Authority shall base the list of approved opportunities for cultural competence continuing education on the criteria established by the advisory committee.

(6) Authority approved continuing education opportunities shall teach attitudes, knowledge and skills enabling health care professionals to effectively communicate with and care for patients from diverse cultures, groups, and communities.

(a) These skills may include:

(A) Applying linguistic skills to communicate effectively with patients.

(B) Using cultural information to establish therapeutic relationships.

(C) Eliciting, understanding and applying cultural and ethnic data in the process of clinical care.

(b) Authority approved continuing education opportunities may include:

(A) Courses delivered in-person or electronically.

(B) Experiential learning such as cultural or linguistic immersion.

(C) Service learning.

(D) Specially designed cultural experiences.

(7) The affected boards shall report to the Authority no later than 30 days after the close of each biennium regarding:

(a) Regulated health care professionals who completed cultural competence continuing education.

(b) Audited health care professionals who completed cultural competence continuing education from the Authority approved list.

(c) Whether the board requires members participate in cultural competence continuing education.

(d) The level of reporting each board requires of members related to participation in cultural competence continuing education.

(8) The Authority shall compile a biennial report on the participation of health care professionals in cultural competence continuing education, including the number of:

(a) Regulated health care professionals who completed cultural competence continuing education.

(b) Audited health care professionals who completed cultural competence continuing education from the Authority approved list.

(c) The number of boards requiring that members participate in cultural competence continuing education.

(d) The level of reporting each board requires of members related to participation in cultural competence continuing education.

(9) On or before August 1 of each even-numbered year, the Authority shall report to the interim committees of the Legislative Assembly, including those related to health care, audits, information management, and information technology about the participation of health-care professionals in cultural competence continuing education as submitted to the Authority by the boards.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 240
Stats. Implemented:
Hist.: OHA 4-2014, f. 12-18-14, cert. ef. 1-1-15

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Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Amendment of HERC Prioritized List of Health Services Reflecting Approved Modifications Effective Oct.1, 2014
Adm. Order No.: DMAP 79-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-31-14
Notice Publication Date: 12-1-2014
Rules Amended: 410-141-0520
Rules Repealed: 410-141-0520(T)
Subject: The OHP program administrative rules govern the Division of Medical Assistance Programs' payments for services provided to clients. The Division needs to permanently amend 410-141-0520 to reference the Health Evidenced Review Committee (HERC) Prioritized List of Health Services' January 1, 2012–December 31, 2014. The HERC has made interim modifications and technical changes to the October 13, 2013 Prioritized List of Health Services. The changes will be effective October 1, 2014.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0520
Prioritized List of Health Services

(1) The Health Evidenced Review Commission (HERC) Prioritized List of Health Services (Prioritized List) is the listing of physical and mental health services with "expanded definitions" of preventive services and the practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their website: http://www.oregon.gov/oha/herc/Pages/PrioritizedList.aspx. For a hardcopy, contact the Medical Assistance Programs within the Oregon Health Authority (OHA). This rule, effective October 1, 2014, incorporates by reference the Centers for Medicare and Medicaid Services' (CMS) approved biennial January 1, 2012–December 31, 2014 Prioritized List, including October 1, 2014 interim modifications and technical changes, expanded definitions, practice guidelines and condition treatment pairs funded through line 498.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Coordinated Care Organization (CCO).

(3) Substance Use Disorder (SUD) treatment services are covered for eligible OHP clients when provided by an FCHP, PCO, and CCO or by a provider who has a letter of approval from the Addictions and Mental Health Division and approval to bill Medicaid for SUD services.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065
Stats. Implemented: ORS 192.527, 192.528, 414.010, 414.065 NS 414.727
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 22-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-21-12; DMAP 43-2012(Temp), f. 9-21-12, cert. ef. 9-23-12 thru 3-21-13; DMAP 11-2013, f. & cert. ef. 3-21-13; DMAP 50-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 57-2013(Temp), f. & cert. ef. 10-29-13 thru 3-30-14; DMAP 7-2014, f. & cert. ef. 1-31-14; DMAP 13-2014(Temp), f. 3-20-14, cert. ef. 4-1-14 thru 9-28-14; DMAP 31-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 63-2014(Temp), f. & cert. ef. 10-17-14 thru 12-31-14; DMAP 79-2014, f. 12-18-14, cert. ef. 12-31-14

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Rule Caption: Amendment of HERC Prioritized List of Health Services Effective 1/1/15 Incorporating Approved Modifications Effective 10/1/14
Adm. Order No.: DMAP 80-2014(Temp)
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Amended: 410-141-0520
Subject: The Authority needs to temporarily amend 410-141-0520. This change will reference the approved Health Evidenced Review Commission (HERC) Prioritized List of Health Services, effective January 1, 2015–December 31, 2015 and incorporating interim modifications and technical changes made October 1, 2014. The changes will be effective January 1, 2015.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0520
Prioritized List of Health Services

(1) The Health Evidenced Review Commission (HERC) Prioritized List of Health Services (Prioritized List) is the listing of physical and mental health services with "expanded definitions" of preventive services and the practice guidelines as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their website: http://www.oregon.gov/oha/herc/Pages/PrioritizedList.aspx. For a hard copy, contact the Division of Medical Assistance Programs within the Oregon Health Authority (OHA).

(2) This rule, effective January 1, 2015, incorporates by reference the Centers for Medicare and Medicaid Services' (CMS) approved January 1, 2015–December 31, 2015 Prioritized List, including October 1, 2014 interim modifications and technical changes, expanded definitions, practice guidelines, and condition treatment pairs funded through line 476.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065
Stats. Implemented: ORS 192.527, 192.528, 414.010, 414.065 NS 414.727
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-

2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 22-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-21-12; DMAP 43-2012(Temp), f. 9-21-12, cert. ef. 9-23-12 thru 3-21-13; DMAP 11-2013, f. & cert. ef. 3-21-13; DMAP 50-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 57-2013(Temp), f. & cert. ef. 10-29-13 thru 3-30-14; DMAP 7-2014, f. & cert. ef. 1-31-14; DMAP 13-2014(Temp), f. 3-20-14, cert. ef. 4-1-14 thru 9-28-14; DMAP 31-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 63-2014(Temp), f. & cert. ef. 10-17-14 thru 12-31-14; DMAP 79-2014, f. 12-18-14, cert. ef. 12-31-14; DMAP 80-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Rule Rewritten to Ensure Language Is Consistent with HERC Coverage Guidelines
Adm. Order No.: DMAP 81-2014
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 410-122-0202
Subject: The Division needs to rewrite the rule to ensure coverage guidelines are consistent with HERC coverage guidelines. The rule is also reorganized to assist providers and staff in interpretation.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-122-0202
Positive Airway Pressure (PAP) Devices for Adult Obstructive Sleep Apnea

(1) The Division of Medical Assistance Programs (Division) may cover a positive airway pressure (PAP) device for treatment of obstructive sleep apnea (OSA) when:

(a) The client has a face-to-face clinical evaluation by the treating physician prior to a sleep test to assess the client for obstructive sleep apnea; and

(b) The client has a polysomnogram performed in a facility-based laboratory or a home sleep test that demonstrates positive diagnosis of OSA with either of the following:

(A) The apnea-hypopnea index (AHI) or Respiratory Disturbance Index (RDI) is greater than or equal to 15 events per hour; or

(B) The AHI or RDI is between 5 and 14 events with additional symptoms including one or more of the following:

(i) Excessive daytime sleepiness as documented by a score of greater than 10 on the Epworth Sleepiness Scale or daytime sleepiness interfering with ADLs that is not attributable to another modifiable sedating condition (e.g. narcotic dependence); or

(ii) Documented hypertension; or

(iii) Ischemic heart disease; or

(iv) History of stroke.

(c) The client or their caregiver has received instruction from the supplier of the PAP device and accessories in the proper use of the equipment.

(d) The client meets criteria listed in section (2) of this rule for the particular device to be used.

(2) Continuous Positive Airway Pressure (CPAP) or Auto-titrating Continuous Positive Airway Pressure (APAP) devices:

(a) A CPAP/APAP device (E0601) may be covered for clients with OSA when criteria in (1)(a)–(c) are met;

(b) A three-month trial (rental) period for PAP devices is required to determine benefit and ongoing coverage of the device;

(c) Rental charges apply toward purchase.

(3) Respiratory Assist devices:

(a) A respiratory assist device (RAD) without backup rate (E0470) may be covered for clients with OSA when:

(A) Criteria in (1)(a)–(c) of this rule are met, and

(B) A CPAP/APAP device (E0601) has been tried and proven ineffective;

(b) If a CPAP/APAP device is tried and found ineffective during the initial facility-based titration or three-month home trial, substitution of a RAD does not require a new face-to-face clinical evaluation or sleep test;

(c) If a CPAP/APAP device has been used for more than three months and the client is switched to a RAD, a clinical re-evaluation must occur, but a new sleep test is not required. A new three-month trial would begin for use of the RAD;

(d) Coverage, coding, and documentation requirements for the use of RADs for diagnoses other than OSA are addressed in 410-122-0205 Respiratory Assist Devices.

(e) A RAD with backup rate (E0471) is not medically indicated for the treatment of obstructive sleep apnea.

(4) For a client using a PAP device prior to Oregon Health Plan (OHP) enrollment, continuing coverage for the device and related accessories may be authorized on a case-by-case basis by the appropriate authorizing unit.

(5) Continued Coverage of PAP device:

(a) Ongoing rental of a PAP device (E0470 or E0601) beyond the three-month trial period is an option in lieu of purchase when medically appropriate, cost effective, and conditions of coverage have been met;

(b) Continued coverage of a PAP device (E0470 or E0601) beyond the first three months of therapy requires that, no sooner than the 31st day but no later than the 91st day after initiating therapy, the treating practitioner shall conduct a face-to-face clinical re-evaluation and document that the client is benefiting from PAP therapy;

(c) If the clinical re-evaluation does not occur until after the 91st day but the evaluation demonstrates that the client is benefiting from PAP therapy as defined in criteria, continued coverage of the PAP device will commence with the date of that re-evaluation;

(d) If a CPAP/APAP has been used more than three months and the client is switched to a RAD, then the clinical re-evaluation shall occur between the 31st and 91st day following initiation of the RAD.

(6) Accessories:

(a) Accessories used with a PAP device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating practitioner for use with a covered PAP device (E0470, E0601);

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;
(B) A7027 — 1 per 3 months;
(C) A7028 — 2 per month;
(D) A7029 — 2 per month;
(E) A7030 — 1 per 3 months;
(F) A7031 — 1 per month;
(G) A7032 — 2 per month;
(H) A7033 — 2 per month;
(I) A7034 — 1 per 3 months;
(J) A7035 — 1 per 6 months;
(K) A7036 — 1 per 6 months;
(L) A7037 — 1 per 3 months;
(M) A7038 — 2 per month;
(N) A7039 — 1 per 6 months;
(O) A7046 — 1 per 6 months.

(7) Payment Authorization:

(a) From the initial date of service through the second date of service, prior authorization (PA) is not required for PAP device rental and related accessories. The provider is responsible to ensure all rule requirements are met;

(b) Payment authorization (i.e., a payment authorization number for billing) is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met;

(c) Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040;

(d) All subsequent services starting with the third date of service require PA;

(e) An order refill does not have to be approved by the ordering practitioner. However, a client or their caregiver must request specific ongoing PAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The DMEPOS provider shall not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance;

(f) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating practitioner. When the equipment is not being used as prescribed, the provider shall stop billing for the equipment and related accessories and supplies.

(8) Guidelines:

(a) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters

of sleep with physician review, interpretation, and report. It shall include sleep staging, which is defined to include a 1–4 lead electroencephalogram (EEG), electro-oculogram (EOG), submental electromyogram (EMG) and an electrocardiogram (ECG). It shall also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(b) Polysomnographic and home studies shall be ordered by the client's treating physician, conducted by an entity that qualifies as a Medicare provider of sleep tests, and in compliance with all applicable state regulatory requirements;

(c) Polysomnographic studies and home sleep tests shall be scored according to the recommended rules as described in the American Academy of Sleep Medicine (AASM) Manual for Scoring of Sleep and Associated Events;

(d) Polysomnographic studies may not be performed by a DMEPOS provider;

(e) Home sleep tests are performed unattended in the client's home using a portable monitoring device that meets the following criteria:

(A) Type II device — Monitors and records a minimum of seven (7) channels: EEG, EOG, EMG, ECG/heart rate, airflow, respiratory movement/effort, and oxygen saturation; or

(B) Type III device — Monitors and records a minimum of four (4) channels: respiratory movement/effort, airflow, ECG/heart rate, and oxygen saturations; or

(C) Type IV device — Monitors and records a minimum of three (3) channels, one of which is airflow; or

(D) Other — Devices that monitor and record a minimum of three (3) channels that include actigraphy, oximetry, and peripheral arterial tone;

(f) For all PAP devices, clients who undergo a home sleep study shall, prior to having the test, receive instruction on how to properly apply a portable sleep monitoring device. This instruction shall be provided by the entity conducting the home sleep test and may not be performed by a DME supplier.

(g) Apnea is defined as the cessation of airflow for at least 10 seconds and documented on a polysomnogram or home sleep monitoring equipment;

(h) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30 percent reduction in thoracoabdominal movement or airflow as compared to baseline and with at least a 4 percent decrease in oxygen saturation;

(i) The apnea-hypopnea index (AHI) is defined as the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device;

(j) The respiratory disturbance index (RDI) is defined as the average number of apneas plus hypopneas per hour of recording without the use of a positive airway pressure device;

(k) If the AHI or RDI is calculated based on less than two hours of continuous recorded sleep, the total number of recorded events used to calculate the AHI or RDI (respectively) shall be at least the number of events that would have been required in a two-hour period (i.e., must reach >30 events without symptoms or >10 events with symptoms);

(l) Adherence to therapy is defined as use of PAP four hours or more per night on 70 percent of nights during a consecutive thirty-day period anytime during the first three months of initial usage.

(9) Documentation Requirements:

(a) Initial coverage:

(A) For CPAP/APAP device, submit the facility-based polysomnogram report or home sleep study report that supports a diagnosis of OSA prior to the third date of service;

(B) For a RAD, submit specific documentation from the treating practitioner that a CPAP was tried and shown to be ineffective;

(b) For extended rental use or purchase of a PAP device beyond the first three months of initial therapy, submit the following documentation no sooner than the 61st day after initiating therapy and prior to the fourth date of service:

(A) Documentation of the face-to-face clinical re-evaluation by the treating practitioner that supports clinical benefit including client tolerance, compliance and efficacy, and demonstrates symptoms of OSA are improved; and

(B) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage date; or

(C) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment; and

(D) Any other medical documentation that supports indications of coverage;

(E) If a CPAP/APAP device has been used more than three months and the client is switched to a RAD, documentation of adherence to therapy shall be submitted during the three-month trial with the RAD;

(c) For a client using a PAP device prior to OHP enrollment, submit the following:

(A) Documentation of clinical benefit including client tolerance, compliance and efficacy, and that symptoms of OSA are improved from the client's treating practitioner; and

(B) A facility-based polysomnogram report or home sleep test as described in this rule and scored as described in (1)(n) that supports a diagnosis of OSA, if available.

(10) Table 122-0202 — PAP Devices.

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

Stat. Auth.: ORS 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2008(Temp), f. 12-17-08, cert. ef. 1-1-09 thru 6-15-09; DMAP 11-2009, f. & cert. ef. 6-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 81-2014, f. 12-23-14, cert. ef. 1-1-15

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Rule Caption: Amend Rule to Ensure Language Is Consistent with HERC Coverage Guidelines
Adm. Order No.: DMAP 82-2014
Filed with Sec. of State: 12-23-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 410-122-0520
Subject: The Division needs to amend the rule listed above to ensure coverage guidelines are consistent with HERC coverage guidelines that reduces the quantity of diabetic supplies allowed for type 2 diabetics who are not insulin dependent.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-122-0520
Glucose Monitors and Diabetic Supplies

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (Division) may cover home blood glucose monitors and related diabetic supplies for clients with diabetes who can self-monitor blood glucose (SMBG) or be monitored with assistance;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes that is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed a structured education and feedback program for self-monitoring of blood glucose and is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) Home blood glucose monitors with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)–(E) of this rule and the following:

(A) For code E2100, the treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system;

(d) If a glucose monitor is covered, lancets, blood glucose test reagent strips, glucose control solutions, insulin syringes, and spring powered devices for lancets may also be covered. Coverage limitations for these supplies are as follows:

(A) For A4258, only one spring powered device every six months;

(B) For A4253 and A4259, the provider of the test strips and lancets shall maintain in their records the order from the treating practitioner. The provider shall verify that the client has nearly exhausted their supply, before dispensing more test strips and lancets. The amount of test strips and lancets covered is based on the needs of the client according to the following limitations:

(i) For clients with type 2 diabetes not requiring multiple daily insulin injections, up to 50 test strips (1 unit) and 100 lancets (1 unit) at the time of diagnosis;

(ii) For clients with type 2 diabetes who require diabetic medication that may result in hypoglycemia, up to 50 test strips and 100 lancets per 90 days. An additional 50 test strips may be covered with clinical documentation of an acute change in glycemic control or active diabetic medication adjustment;

(iii) For clients with Type 1 diabetes and those with type 2 diabetes requiring multiple daily insulin injections, up to 100 test strips and 100 lancets per month;

(iv) For clients with gestational diabetes, up to 150 test strips and 200 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(v) Quantities exceeding these utilization guidelines require prior authorization and may be covered when:

(I) Basic coverage criteria in (1)(b)(A)-(E) for home glucose monitors and related accessories and supplies are met; and

(II) The treating practitioner has seen the client and evaluated their diabetes control within six months prior to ordering quantities of test strips and lancets that exceed the utilization guidelines and has documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(III) If refills of quantities of supplies that exceed utilization guidelines are dispensed, there shall be documentation in the physician's records (e.g., a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation shall be present at least every six months;

(C) Home blood glucose monitors are subject to a limit of one monitor per two calendar years;

(e) Diabetic supply providers may not dispense a quantity of supplies exceeding a client's expected utilization. Providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted. Regardless of utilization, a provider may not dispense more than a three-month quantity of glucose testing supplies (i.e., up to 300 test strips, 300 lancets, and 500 insulin syringes) at a time. Prior authorization (PA) shall be obtained prior to dispensing amounts in excess of these utilization limits;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver shall specifically request refills of glucose monitor supplies before they are dispensed. The provider may not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Purchase fee for a glucose monitor includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236), and a spring-powered lancet device (A4258);

(i) The following services are not covered:

(A) Peroxide (A4244), betadine, or phisoHex (A4246, A4247);

(B) Alternate site blood glucose monitors;

(C) Blood glucose monitors and related supplies prescribed on an "as needed" basis;

(D) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor;

(E) Disposable gloves;

(F) Home blood glucose disposable monitors;

(G) Jet injectors;

(H) Insulin delivery devices and related supplies other than those identified in this rule and OAR 410-122-0525;

(I) Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings;

(J) Urine test or reagent strips or tablets.

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore clients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse in both eyes;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets.

(3) Documentation requirements:

(a) For supplies requiring prior authorization (PA), submit documentation that supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies shall include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order is only required if the start date is different than the signature date;

(c) A new order shall be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation that includes a narrative statement from the practitioner which indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 clients with impaired manual dexterity, submit documentation that includes a narrative statement from the practitioner which indicates an explanation of the client's medical condition necessitating the monitor with special features;

(f) When requesting quantities of supplies that exceed utilization guidelines as specified in (1)(d)(B)(i)–(iv) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(v)(I)–(III) to the appropriate authorization authority for PA;

(g) Documentation that supports condition of coverage requirements for codes billed in this rule shall be kept on file by the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) provider and made available to the Division on request;

(h) The appropriate diagnosis code describing the condition that necessitates glucose testing shall be included on each claim for the monitor, accessories, and supplies;

(i) Diabetic supply providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, the Division will not rely solely on those forms to prove the medical appropriateness of services provided;

(j) A client's medical records shall support the justification for supplies dispensed and billed to the Division.

(4) Billing and Payment Guidelines:

(a) Diabetic supplies shall be billed using a National Drug Code (NDC). DMEPOS provider types shall submit claims with appropriate NDC and HCPCS codes to the Division via the Web Portal or Point of Sale Systems via professional claim format. Pharmacy provider types shall submit claims with appropriate NDC to the Division via the Web Portal or Point of Sale Systems via pharmacy claim format. Claims submitted on these systems without NDC's will not be processed. This NDC requirement applies to:

(A) Home glucose monitors; and

(B) Blood glucose test reagent strips;

(C) Lancets;

(D) Insulin syringes;

(E) Spring powered lancet devices;

(F) Calibrating solutions and chips;

(b) For specialized glucose monitors and the respective testing supplies, such as those with special features for the visually impaired and those

with manual dexterity problems, the provider shall obtain PA. After PA the provider can submit a professional claim to the Division;

(c) Orders received from prescribing clinicians for blood glucose test reagent strips that exceed utilization guidelines outlined in section (1)(d)(B)(i)–(iv) will require PA from the Division. Diabetic supply providers may initially dispense up to utilization limits (i.e., 300 test strips, 300 lancets, and 500 insulin syringes) prior to obtaining PA for orders that exceed utilization guidelines. After PA is issued the remaining amount may be dispensed for a three-month time period.

(3) Procedure Codes: Table 122-0520 — Diabetic Supplies.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 12-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 82-2014, f. 12-23-14, cert. ef. 1-1-15

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Rule Caption: Annual Updates for Relative Value Units, Clinical Lab and Ambulatory Surgical Centers

Adm. Order No.: DMAP 83-2014(Temp)

Filed with Sec. of State: 12-23-2014

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 410-120-1340

Subject: The Division of Medical Assistance Programs (Division) will temporarily amend this rule to implement annual updates to the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services and Clinical Laboratory and Ambulatory surgical services.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-1340

Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules.

(5) Amount billed may not exceed the provider's "usual charge" (see definitions).

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2015 Total RVU weights published in the Federal Register, Vol. 79, November 13, 2014 to be effective for dates of services on or after January 1, 2015:

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) $40.79 for labor and delivery codes (59400-59622);

(ii) $36.0666 for Federally Qualified primary care codes billed by providers meeting the criteria in OAR 410-130-0005 for dates of service between January 1, 2013 and December 31, 2014;

(iii) $27.82 for Oregon primary care providers and services not specified in sub-paragraph (ii). A current list of primary care CPT, HCPCs, and provider specialty codes is available at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml.

(iv) $25.48 for all remaining RVU weight based CPT/HCPCS codes.

(D) Rate calculation: Effective January 1, 2015, the Division shall calculate rates for each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i) Work RVU) X (Work GPCI of 1) + (Practice Expense RVU) X (Practice GPCI of 0.974) + (Malpractice RVU) X (Malpractice GPCI of 0.708);

(ii) Sum in paragraph (D)(i) multiplied by the applicable conversion factor in paragraph (C) .

(b) Non RVU based rates:

(A) $20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70 percent of the 2015 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80 percent of the 2014 Medicare fee schedule;

(D) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed, the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25 percent. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling;

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in section (6) are updated periodically and posted on the Authority web site at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml.

(8) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Hospital Services program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, may not exceed any upper limits established by federal regulation.

(9) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aging and People with Disabilities (APD) may not exceed the costs of nursing facility services unless the criteria in OAR 411-027-0020 have been met.

(11) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities and psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) The Division may not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent, or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(13) The Division may not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules (chapter 410, division 129 and 131);

(c) Continuous oxygen that exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services program administrative rules (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services program administrative rules (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services program rules (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122).

(14) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment may not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(15) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible, whichever is less. The Division's payment may not exceed the co-insurance and deductible amounts due;

(b) The Division pays the allowable rate for covered services that are not covered by Medicare.

(16) For clients with third-party resources (TPR), the Division pays the allowed rate less the TPR payment but not to exceed the billed amount.

(17) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(18) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13; DMAP 49-2013, f. & cert. ef. 9-25-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 24-2014, f. & cert. ef. 4-4-14; DMAP 83-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Remove Artificial Disc Procedures So Division May Reimburse Providers per Prioritized List of Health Services
Adm. Order No.: DMAP 84-2014(Temp)
Filed with Sec. of State: 12-24-2014
Certified to be Effective: 12-24-14 thru 3-30-15
Notice Publication Date:
Rules Amended: 410-130-0220
Subject: This rule lists medical billing services not covered or services that the Division of Medical Assistance Programs (Division) considers to be bundled in other services for payment purposes. No payment is issued for services listed in this rule. This temporary rule change will remove artificial disc procedures from this rule so that the Division may pay for these services.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0220
Not Covered/BundledServices

(1) Refer to the Oregon Health Plan administrative rules (chapter 410, division 141) and General Rules (chapter 410, division 120) for coverage of services. Refer to Table 130-0220-1 in this rule for additional information regarding not covered services or for services that the Division of Medical Assistance Programs (Division) considers to be bundled in other services.

(2) The following are examples of not covered services. This is not an all-inclusive list:

(a) Psychotherapy services (covered only through local mental health clinics and Mental Health Organizations);

(b) Routine postoperative visits (included in the payment for the surgery) during 90 days following major surgery (global period) or 10 days following minor surgery;

(c) Services that are normally provided in the practitioner's office but at the client's request are provided in a location other than the practitioner's office;

(d) Telephone calls for purposes other than tobacco cessation, maternity case management, and telemedicine.

(3) For specific information, see General Rules OAR 410-120-1200, Medical Assistance Benefits: Excluded Services and Limitations.

(4) Table 130-0220-1.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 55-2014(Temp), f. 9-26-14, cert. ef. 10-1-14 thru 3-30-15; DMAP 84-2014(Temp), .f & cert. ef. 12-24-14 thru 3-30-15

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Rule Caption: Medicaid Payment for Behavioral Health Services
Adm. Order No.: DMAP 85-2014(Temp)
Filed with Sec. of State: 12-24-2014
Certified to be Effective: 1-1-15 thru 6-29-15
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Subject: These rules describe the process for Medicaid providers to receive payment for providing behavioral health services to Oregon Medicaid recipients.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-172-0000
Scope

These rules specify standards for authorized appropriate reimbursement of Medicaid or State Children's Health Plan funded addictions and mental health services and supports. This includes payments for community-based services as well as those payments made for acute inpatient services in a general medical setting or a freestanding facility meeting the federal definition as an institute for mental disease reimbursed as a result of a request for payment. The requirements set forth here in OAR 410-172-000 through 410-172-0510 and referenced rules must be met in order for Medicaid payment to have been made appropriately.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0600, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0010
Definitions

(1) "Action" means:

(a) The denial, limitation or restriction of a requested covered services including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service; or

(c) The failure to provide services in a timely manner, as defined as the Oregon Health Authority.

(2) "Active Treatment" means a service provided as prescribed in a professionally developed and supervised Individual Services and Supports Plan to address or improve a condition.

(3) "Addictions and Mental Health Division" means the Division of the Oregon Health Authority responsible for the administration of addictions and mental health services provided in Oregon or to its residents.

(4) "Allowable Cost" means the cost of treatment services based on cost finding principles found in the appropriate OMB Circular such as "Cost Principles for Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) and including allowable costs incurred for interest on the acquisition of buildings and improvements thereon.

(5) "Appeal" means a request by an Individual or their representative to review an Action as defined in this rule.

(6) "Assertive Community Treatment" (ACT) means an evidence-based practice which utilizes a highly integrated, trans-disciplinary team to deliver comprehensive and effective services to individuals with serious mental illness who have needs that have not been well met by traditional approaches to delivering services.

(7) "Certificate of Approval" means the document awarded by the AMH signifying that a specific, named organization is judged by AMH to operate in compliance with applicable rules. A "Certificate of Approval" for mental health services is valid only when signed by the Deputy Director of AMH and, in the case of a subcontract provider of a CMHP, the CMHP director.

(8) "Certification of Need" means the procedures established by the Authority to certify in writing a child's need for psychiatric residential treatment services.

(9) "Child" or "Children" means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, will be considered a child until age 21 for purposes of these rules.

(10) "Children, Adults and Families" (CAF) means the Division serving as Oregon's child welfare agency.

(11) "Clean Claim(s)" means a claim that can be processed without obtaining additional information from the provider of the service or from a third party. It includes a claim with errors originating in the State's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.

(12) "Commission on Accreditation of Rehabilitation" (CARF) means an organization that accredits behavioral health care and community providers based on the current edition of the "CARF Behavioral Health" standards manual.

(13) "Community Mental Health Program" (CMHP) means an entity that is responsible for planning and delivery of services for persons with substance use disorders, mental health diagnosis, or developmental disabilities, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Authority.

(14) "Complaint" means an expression of dissatisfaction from an Individual or their representative to a Practitioner or Provider about any matter other than an Action.

(15) "Council on Accreditation of Services for Families and Children Facilities" (COA) means an organization that accredits behavioral health care and social service programs based on the current edition of the COA "Standards for Behavioral Health Care Services and Community Support and Education Services Manual."

(16) "Disabling Mental Illness" means a mental illness that substantially limits functioning in one or more major life activity.

(17) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(18) "Division of Medical Assistance Programs" (DMAP) means the Division of the Oregon Health Authority responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP — Title XXI), and several other programs.

(19) "DMAP/AMH" means the Division of Medical Assistance or Addictions and Mental Health Division. Both DMAP and AMH have delegated responsibilities for the administration of Medicaid funded addictions and mental health services and supports. A lead agency will be identified to each entity involved in any process when the delegation of such is necessary.

(20) "Diagnostic and Statistical Manual" (DSM) means the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(21) "Fidelity Review" means an on-site assessment utilizing a standardized, reliable, and valid evaluation tool to determine the degree to which an evidence-based practice is being implemented. Fidelity reviews include staff interviews, consumer and family member interviews, observation of service provision, review of program data, and/or chart reviews as necessary for the practice being reviewed.

(22) "Grievance System" means the overall system in which an Individual can express dissatisfaction and that expression acted on if necessary. The Grievance System includes a Complaint process, and Appeals process and access to the Division of Medical Assistance Programs Administrative Hearing process.

(23) "Habilitation Services" means services designed to help an individual attain or maintain their maximal level of independence, including the individual's acceptance of a current residence and the prevention of unnecessary changes in residence. Services are provided in order to assist an individual to acquire, retain or improve skills in one or more of the following areas: assistance with activities of daily living, cooking, home maintenance, recreation, community inclusion and mobility, money management, shopping, community survival skills, communication, self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(24) "Individual" means any person being considered for or receiving services and supports.

(25) "Individual Service and Support Plan" (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the desired outcomes of service.

(26) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving Intensive Treatment Services (ITS) and Enhanced Care Services (ECS) and may include multiple disciplines or agencies. For ITS programs, the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(27) "Joint Commission, The" (TJC) means the commission which accredits psychiatric residential treatment facilities according to its current edition of the "Comprehensive Accreditation Manual for Hospitals" and the "Comprehensive Accreditation Manual for Behavioral Health Care."

(28) "Letter of Approval" means the document awarded to service providers under OAR 309-012-0010 which states that the provider is in compliance with applicable administrative rules of the AMH. Letters of Approval issued for mental health services are obsolete upon their expiration date, or upon the effective date of 309-012-0140, whichever is later.

(29) "Licensed Medical Practitioner" (LMP) means a person who meets the following minimum qualifications as documented by the LMHA or designee:

(a) Physician licensed to practice in the State of Oregon; or

(b) Nurse practitioner licensed to practice in the State of Oregon; or

(c) Physician's Assistant licensed to practice in the State of Oregon.

(d) In addition, whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For ICTS and ITS providers, a "Licensed Medical Practitioner" or "LMP" means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(30) "Local Mental Health Authority" (LMHA) means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a Community Mental Health Program (CMHP);

(b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(31) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act.

(32) "Medicaid Management Information System" The mechanized claims processing and information retrieval system that all states are required to have according to section 1903(a)(3) of the Social Security Act and defined in regulation at 42 CFR 433.111. All states operate an MMIS to support Medicaid business functions and maintain information in such areas as provider enrollment; client eligibility, including third party liability; benefit package maintenance; managed care enrollment; claims processing; and prior authorization.

(33) "Medically Appropriate" means services and medical supplies required for prevention, diagnosis or treatment of a physical or mental health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.

(34) "National Provider Identifier" (NPI) means a unique 10-digit identifier mandated by the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) for all healthcare providers that is good for the life of the provider.

(35) "Non-Contiguous Area Provider" means a provider located more than 75 miles from Oregon and enrolled with the Division.

(36) "Plan of Care" (POC) means a tool within the Medicaid Management Information System used to authorize certain Medicaid funded services for Individuals.

(37) "Provider" means an organizational entity, or qualified person, that is operated by or contractually affiliated with, a community mental health program, or contracted directly with the Authority, for the direct delivery of addictions, problem gambling or mental health services and supports.

(38) "Psychiatric Residential Treatment Facility" means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment, Psychiatric Residential Treatment Services (PRTS), Secure Children's Inpatient Treatment Programs (SCIP), Secure Adolescent Inpatient Treatment Programs (SAIP), and Sub-acute psychiatric treatment for children who require active treatment for a diagnosed mental health condition in a 24-hour residential setting.

(39) "Psychiatric Residential Treatment Services" means services delivered in a PRTF that include 24-hour supervision for children who have serious psychiatric, emotional or acute mental health conditions that require intensive therapeutic counseling and activity and intensive staff supervision, support and assistance.

(40) "Qualified Mental Health Associate" (QMHA) means a person delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the LMHA or designee:

(a) A bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three year's relevant work, education, training or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts; and

(C) Provide psychosocial skills development and to implement interventions prescribed on a Treatment Plan within the scope of his or her practice.

(41) "Qualified Mental Health Professional" (QMHP) means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

(a) Graduate degree in psychology;

(b) Bachelor's degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(42) "Representative" means a person who acts on behalf of an individual at the individual's request with respect to a grievance, including, but not limited to a relative, friend, employee of the Authority, attorney or legal guardian.

(43) "Residential Alcohol and Other Drug Treatment Program" means a publicly or privately operated program as defined in ORS 430.010 that provides assessment, treatment, rehabilitation and twenty four hour observation and monitoring for individuals with alcohol and other drug dependence, consistent with Level III of American Society of Addiction Medicine (ASAM) PPC-2R.

(44) "Supported Employment" (SE) means an evidence-based practice which provides services and supports to enable individuals with a serious mental illness to obtain and maintain competitive employment.

(45) "System Of Care" means the comprehensive array of mental health and other necessary services which are organized to meet the multiple and changing needs of children with severe emotional disorders and their families.

(46) "Usual and Customary Charge" means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(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 federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0605, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0020
Clinical Documentation

Providers shall comply with clinical documentation as required in the Integrated Services and Supports Rule (OAR 410-120-1360, and either chapter 309 divisions 18, 19, or 22).

Stat. Auth.: ORS 413.042, 430.640, 430.705 & 430.715

Stats. Implemented: ORS 414.025, 414.065 & 430.640

Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; [MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; Temporary repealed by MHS 10-2012, f. & cert. ef. 6-19-12]; ; Renumbered from 309-016-0610, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0030
Billing

Billing Requirements. Providers shall meet all requirements in Oregon Administrative Rule 410-120-1280 Medical Assistance Programs Billing

Stat. Auth.: ORS 413.042 & 430.640

Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0615, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0040
Submission

(1) Timely Submission Providers shall meet all requirements in Oregon Administrative Rule 410-120-1300 Medical Assistance Programs Timely Submission of Claims

(2) Submission Process

(a) Services may be received directly from any appropriately enrolled or Divison Provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division's administrative rules and supplemental information;

(c) The Division shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

Stat. Auth.: ORS 413.042, 430.640, 430.705 & 430.715
Stats. Implemented: ORS 414.025, 414.065 & 430.640
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0620, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0050
Allowable and Non-Allowable Costs

(1) Costs of a services will be subject, but not limited to the allowable and non-allowable costs as determined by cost finding principles found in "Cost Principles for a Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) with the exception of interest: Mortgage interest on the acquisition of buildings and improvements, which is necessary and proper, will be classified as an allowable cost for a non-profit psychiatric residential treatment facility:

(a) "Necessary" requires that the interest be incurred on a loan made for a purpose reasonably related to patient care.

(b) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made.

(2) In accord with the Deficit Reduction Act of 1984, as outlined in the Social Security Act, Section 1851(V)(I)(O), for determining the allowance for depreciation and interest on capital indebtedness with respect to a non-profit psychiatric residential treatment facility which has undergone a change of ownership, this rule provides that the valuation of the asset after such a change of ownership has occurred shall be the lesser of the allowable acquisition cost of such an asset to the owner of record as of July 18, 1984, or the acquisition cost of such an asset to the new owner. In the case where the asset was in existence prior to July 18, 1984, the value of the asset will be based on the allowable acquisition cost to the first owner of record after July 18, 1984, thereby eliminating upward revaluation of an asset. The recapture of depreciation only up to the full value of the initial asset is allowed.

(3) Non-allowable costs include but are not limited to:

(a) Room and Board except when providing Psychiatric Residential Treatment Services for children and adolescents reimbursed under the Inpatient psychiatric Services for Individuals Under Age 21 section of the Code of Federal Regulations (42 CFR 440.160).

(b) Educational program services as defined by the Department of Education.

(c) Costs of services otherwise reimbursed as payment(s) in full through Division medical programs.

(d) Costs (including legal fees, accounting and administrative costs, travel costs, and costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment made as payment(s) in full has previously been made.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0625, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0060
Payment

(1) The Division will make payment in compliance with 42 CFR 447.10. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Oregon Health Authority Electronic Data Interchange (EDI) rules, OAR 943-120-0100 through 943-120-0200. The Division may require that payment for services be made only after review by the Division.

(2) The Division sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the AMH maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) The Division's maximum allowable rate setting process uses a methodology that is based on the existing Medicaid fee schedule with adjustments for legislative changes and payment levels. The rates are updated periodically and posted on the Division's website at http://www.oregon.gov/oha/healthplan/Pages/reports.aspx.

(b) Provider rules may specify reimbursement rates for particular services or items. Provider specific rates are determined based on the Provider's allowable costs of providing the service.

(4) The Authority sets payment rates for out-of-state institutions and similar facilities, such as psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service.

(5) The Division will not make payment on claims that have been assigned, sold, or otherwise transferred or when the Billing Provider, Billing Agent or Billing Service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a Provider for accounts receivable.

(6) Payment for Division Clients with Medicare and Medicaid, excluding qualified Medicare beneficiary programs:

(a) The Division limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. Division payment cannot exceed the co-insurance and deductible amounts due;

(b) The Division pays the Division's allowable rate for Division covered services that are documented to be not covered by Medicare.

(7) For Clients with Third-Party Resources (TPR), Division pays the the Division allowed rate less the TPR payment but not to exceed the billed amount.

(8) Division payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division such 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 Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain Payment Authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual Provider rules.

(9) The Division will reimburse providers consistent with all requirements in 42CFR447.45 Timely Claims Payment including but not limited to:

(a) The Division must pay 90 percent of all clean claims from Providers within 30 days of the date of receipt.

(b) The Division must pay 99 percent of all clean claims from Providers within 90 days of the date of receipt.

(c) The Division must pay all other claims within 12 months of the date of receipt except in various circumstances listed in 42CFR447.45(4).

(10) Payment by the Division does not limit the Authority 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 review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0630, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0070
Overpayment

(1) The Authority Identified. Not withstanding OAR 410-120-1397 when the Authority determines an overpayment has been made to a Provider, the amount of overpayment is subject to recovery by the Authority. The overpayment amount will be determined at the Authority's discretion through direct examination of claims, through statistical sampling and extrapolation techniques or other means. Procedures for recovery of funds are as described in the Division of Medical Assistance Programs General Rules for the Division of Medical Assistance Programs (OAR 410-120-1505) or by applicable contract language.

(2) Provider identified. When a provider discovers that they requested and may have received reimbursement not in compliance with all applicable rules they must contact the Division's Medicaid Policy Unit and Office of Payment Accuracy and Recovery (OPAR) promptly to report the possible inappropriate payment and discuss the manner by which the appropriateness will be determined as well as programmatic changes and other notifications to be made.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0635, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0080
Notice of Action Requirements of Providers

When a Provider (or authorized staff acting with authority to determine the Individual's needs) takes or intends to take any Action the Individual shall be mailed a written client Notice of Action in accordance with OAR 410-141-0263.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0640, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0090
Administrative Hearing

A Division of Medical Assistance Programs (DMAP) Member or their representative that disagrees with a Notice of Action may request a DMAP Administrative Hearing consistent with OAR 410-120-1865 Denial, Reduction or Termination of Services.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0645, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0100
Provider Appeals

Providers have the right to file an appeal consistent with Oregon Administrative Rule 410-120-1560 Provider Appeals, 410-120-1570 Claims Re-determinations, 410-120-1580 Provider Appeals — Administrative Review and 410-120-1600 Provider Appeals — Contested Case Hearings.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0650, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0110
Program

Conditions of Provider Participation. Provider shall meet the following requirements:

(1) Possess the appropriate current and valid License, Letter of Approval and/or Certificate of Approval issued by AMH for the mental health and addictions services provided.

(2) Develop a Cost Allocation Plan to support the Provider's Usual and Customary Charge

(3) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Authority.

(4) Participate in the claim review process outlined in OAR 410-120-1397

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0660, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0120
Individual Provider Enrollment

Providers shall meet all requirements in Oregon Administrative Rule 410-120-1260 Medical Assistance Programs Provider Enrollment and 943-120-0310 Provider Requirements and 943-120-0320 Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0665, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0130
Sanctions

Sanctions will be imposed on Providers when necessary in accordance with Oregon Administrative Rule 410-120-1400 through 410-120-1460 Medical Assistance Programs Provider Sanctions and Types and Conditions of Sanction

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0670, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0140
Prior Authorization

Authorization of Payment.

(1) Some of the services or items covered by the Division require authorization before payment will be made. Some services require authorization before the service can be provided. Services requiring prior authorization can be found on the Mental Health Procedure Codes and Reimbursement Rates Table located at www.oregon.gov/policy/healthplan/Pages/report.aspx. The procedure for receiving authorization is detailed in the Provider Manual found on the same website.

(2) Documentation submitted when requesting authorization must support the medical justification for the service. A complete request is one that contains all necessary documentation and meets any other requirements as described in the appropriate Provider rules.

(3) The Division will authorize for the level of care or type of service that meets the Individual's medical need. Only services which are Medically Appropriate and for which the required documentation has been supplied may be authorized. The authorizing agency may request additional information from the Provider to determine medical appropriateness or appropriateness of the service.

(4) The Division and its authorizing agencies are not required to authorize services or to make payment for authorized services under the following circumstances:

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

(b) The Provider does not hold a valid Certificate of Approval from the AMH for the service;

(c) The Provider cannot produce appropriate documentation to support medical appropriateness, or the appropriate documentation was not submitted to the Division;

(d) The service has not been adequately documented (see 410-172-0020); that is, the documentation in the Provider's files is not adequate to determine the type, medical appropriateness, or frequency and duration of services provided and required documentation is not in the Provider's files;

(e) The services billed or provided are not consistent with the information submitted when authorization was requested or the services provided are determined retrospectively not to be medically appropriate;

(f) The services billed are not consistent with those provided;

(g) The services were not provided within the timeframe specified on the authorization of payment document;

(h) The services were not authorized or provided in compliance with these rules, the General Rules and in the appropriate Provider rules.

(i) The provider was not eligible to receive reimbursement from Medicaid at the time the service was rendered.

(j) The individual's needs can be better met through another system of care, such as Aging and People with Disabilities; the individual is eligible for services under that system of care; the individual has been given notice of that eligibility; and the services necessary to support a successful transition to the alternate system of care have been provided.

(5) Payment made for services described in subsections (a)–(h) of this rule will be recovered (see also Basis for Mandatory Sanctions and Basis for Discretionary Sanctions).

(6) Retroactive Eligibility:

(a) In those instances when Individuals are made retroactively eligible, authorization for payment may be given if:

(A) The Individual was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules, and;

(C) The request for authorization is received by the Division within 90 days of the date of service;

(b) Services provided when a Medicaid-eligible Individual is retroactively dis-enrolled from a Prepaid Health Plan (PHP) or services provided after the Individual was dis-enrolled from a PHP may be authorized if:

(A) The Individual was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules; and

(C) The request for authorization is received by the Division within 90 days of the date of service;

(c) Any requests for authorization after 90 days from date of service require documentation from the Provider that authorization could not have been obtained within 90 days of the date of service.

(7) The Division will process requests for prior authorization that do not require additional information from the provider or third party consistent with timeliness of payments for clean claims described in 42CFR447.45 and included in 309-016-0630(9).

(8) Prior Authorization is valid for the time period specified on the authorization notice, but not to exceed 12 months, unless the Individual's benefit package no longer covers the service, in which case the authorization will terminate on the date coverage ends.

(9) Prior Authorization for Individuals with other insurance or for Medicare beneficiaries:

(a) When Medicare is the primary payer for a service, no Prior Authorization from the Division is required, unless specified in the appropriate program Provider rules;

(b) For Individuals who have private insurance or other Third Party Resources (TPRs), such as Blue Cross, Tri-Care, etc., the Division requires Prior Authorization as specified above and in the appropriate Provider rules when the other insurer or resource does not cover the service or when the other insurer reimburses less than the Division rate;

(c) For Individuals in a Medicare's Social Health Maintenance Organization (SHMO), the SHMO requires Payment Authorization for some services. the Division requires Prior Authorization for services which are covered by the Division but which are not covered under the SHMO as specified above and in the appropriate Provider rules.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 10-2012, f. & cert. ef. 6-19-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0675, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0150
Limitations

Published Payment Schedule.

(1) Payment will be made at each Provider's usual and customary charge or the Division's published reimbursement upper payment limit, whichever is less, minus payments received or due from other payors. Payments to other specified Providers will be made according to other approved schedules:

(a) Limitations contained in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule, such as the maximum rate and the amount, duration, and scope of services provided, are subject to change at the discretion of the Division. Providers will be notified of such changes in writing;

(b) Payment will be made for services listed in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule which are rendered to Medicaid-eligible Individuals by qualified staff meeting the definition of chapter 309 division 18, 19, or 22 during the period in which the Provider is enrolled in the Division of Medical Assistance Program.

(2) Reimbursement for specific services that are typically limited in frequency or when occurring on the same day as other services may be reimbursed for a special population of individuals who are at high-risk for long-term institutionalization and have been authorized by the Division for fee-for-service mental health rehabilitative services. Pending CMS approval, the following combination of services, when authorized prior to the service, billed with an HK modifier and when approved for a specific individual by the Division, will be reimbursed.

Additional Services Rendered on the

Procedure code	Same Day of Service
90805	G0176, G0177, 90857, 90882
90807	G0176, G0177, 90857, 90882
90809	G0176, G0177, 90857, 90882
90804	G0176, G0177
90806	G0176, G0177
90808	G0176, G0177
90846	G0176, G0177, 90857, 90882
90847	G0176, G0177
90853	G0176, G0177, 90882
90857	G0176, G0177, 90882

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0680, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0160
Variances

A variance from those portions of these rules that are not derived from federal regulations, Oregon's Medicaid State Plan or the General Rules for Oregon Medical Assistance Programs may be granted to an applicant for a period of up to one year in the following manner:

(1) The applicant shall submit to the Division's Medicaid Policy Unit a written request which includes:

(a) The section(s) of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought unless under the discretion of the Division the practice detailed in the variance will be ongoing to be renewed annually.

(2) The Division's Director shall approve or deny the request for variance in writing.

(3) The Division's Medicaid Policy Unit shall notify the Provider of the decision in writing within 30 days of receipt of the request.

(4) Appeal of the denial of a variance request shall be to the Director, whose decision shall be final.

(5) Variances may only be granted for up to one year. A Provider requesting a Variance to be continued beyond one year must re-apply.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12; Renumbered from 309-016-0685, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0170
Individual Eligibility

(1) To be eligible for State Plan Personal Care services under these rules, a person must require assistance from a qualified provider due to a disabling mental health condition with one or more of the Personal Assistance Services identified in OAR 411-034-0020(2)(a)–(f). The qualified provider must be providing these services, paid by the Division in accordance with an authorized service plan.

(2) A person eligible for State Plan Personal Care services under these rules must be a current recipient of at least one of the following programs defined in OAR 461-101-0010 and 410-200-0015;

(a) Extended Medical (EXT);

(b) Medical Assistance Assumed (MAA);

(c) Medical Assistance to Families (MAF);

(d) Oregon Health Plan (OHP);

(e) Oregon Supplemental Income Program Medical (OSIPM);

(f) Temporary Assistance to Needy Families (TANF); or

(g) Refugee Assistance (REF).

(3) State Plan Personal Care services are not available for individuals in a prison, hospital, sub-acute care facility, nursing facility or other medical institution.

(4) The Division or its designee has the authority to close the eligibility and authorization for State Plan Personal Care services if an individual fails to employ a qualified provider or to receive Personal Assistance Services from a qualified provider paid by the Division for thirty continuous calendar days or longer.

(5) Individuals served under the Medicaid 1915(c) Home and Community-Based Services waiver for the aged and physically disabled, or the 1115(c) Independent Choices waiver, are not eligible to receive State Plan Personal Care services.

(6) Individuals receiving medical and long-term care services through the Program of All-inclusive Care for the Elderly (PACE), as described in

OAR chapter 411, division 045, must not also receive State Plan Personal Care services under these rules.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0690, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0180
Covered Services

Specific personal care services must be prescribed by a physician or licensed practitioner of the healing arts in accordance with a plan of treatment or authorized for the individual in accordance with a service plan approved by the State or designee. The services are provided by an individual who is qualified to provide such services and who is not a legally responsible relative of the Individual. The services may be furnished in a home or other allowable location.

(1) Personal Care tasks include:

(a) Basic personal hygiene — providing or assisting with:

(A) Bathing (tub, bed bath, shower);

(B) Shampoo, hair grooming;

(C) Shaving;

(D) Nail care — hands;

(E) Nail care — feet;

(F) Foot care;

(G) Dressing; and

(H) Skin care — application of emollients if approved by physician, repositioning (see 5b).

(b) Bowel and bladder care:

(A) Assisting on and off toilet, commode or bedpan, diapering;

(B) External cleansing of perineal area;

(C) External cleansing of Foley catheter — after demonstrating technique to RN;

(D) Emptying catheter drainage bag — after demonstrating technique to RN;

(E) Changing colostomy or ileostomy bag for individual with stabilized condition;

(F) Encouraging adequate fluid intake; and

(G) Maintenance bowel care;

(c) Assisting individual to take medications:

(A) Open and properly reseal medication containers if individual unable to do so;

(B) Observe to assure individual taking medication as ordered by physician;

(C) Remind appropriate person when prescription refill needed; and

(D) Administration of stabilized, maintenance medication(s).

(d) Assist oxygen:

(A) Maintain clean equipment; and

(B) Assist with maintaining adequate supply.

(e) Assist with mobility, transfers and comfort:

(A) Assist with ambulation with or without aids. Assure repositioning every two hours or more often for bedridden or wheelchair-using individuals

(B) Encourage active range-of-motion exercises when indicated;

(C) Assist with passive range-of-motion exercise if ordered by physician and RN has observed and approved technique; and

(D) Assist with transfers with or without mechanical devices.

(f) Nutrition:

(A) Prepare nutritional meals;

(B) Plan and prepare special diets as ordered by physician;

(C) Assure adequate fluid intake; and

(D) Feed if necessary.

(g) Care of disoriented, mentally or physically disabled individual:

(A) Assure maximum safety of individuals; and

(B) Provide or assist with approved activities.

(h) First aid and handling of emergencies;

(A) Discussed and approved at time of first visit; and

(B) Maintain and prioritize emergency notification system.

(i) Perform housekeeping tasks necessary to maintain a healthy and safe environment for the individual.

(j) Arrange and assist individual to and from necessary appointments.

(k) Observation of individual status and reporting of any significant changes to the appropriate case manager or other person as designated by the care plan.

(l) Tasks delegated by a nurse (reference nurse delegation act.

(2) Providers of personal care services must document the services provided in a manner consistent with the Integrated Services and Supports Rule (OAR 410-120-1360, and chapter 309, divisions 18, 19, or 22).

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0695, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0190
Qualified Provider

(1) A qualified provider is a person who, in the judgment of the Division or its designee, can demonstrate by background, skills and abilities the capability to safely and adequately provide the services authorized.

(2) A qualified provider must maintain a drug-free work place and must be approved through the criminal history check process described in OAR 943-007.

(3) A qualified provider paid by the Division must not be the parent, or step-parent of an eligible minor child, the eligible individual's spouse or another legally responsible relative consistent with 42CFR440.167.

(4) A qualified provider must be authorized to work in the United States, in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules.

(5) A qualified provider must be enrolled as a PCA with an individual provider number

(6) Criminal History Re-checks:

(a) Criminal history re-checks may be conducted at the discretion of the Authority or designee, in accordance with OAR 943-007 and will be conducting at least every two years.

(b) Providers must comply with criminal history re-checks by completing a new criminal history authorization form when requested to do so by the Authority.

(c) The provider's failure to complete a new criminal history check authorization will result in the inactivation of the provider enrollment. Once inactivated, a provider must reapply and meet all of the standards described in this rule to have their provider enrollment reactivated.

(7) Provider must not be included on any US Office of Inspector General Exclusion lists

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10 ; Renumbered from 309-016-0700, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0200
Qualified Provider

The Division, Division or designee may deny or terminate a Personal Care Attendant's provider enrollment and provider number if the Personal Care Attendant:

(1) Has been appointed the legal guardian of the individual;

(2) Is denied as the result of a weighing test performed as part of the criminal history check process described in OAR 943-007;

(3) Lacks the skills, knowledge, or ability to adequately or safely perform the required work;

(4) Violates protective service and abuse rules in OAR chapter 411, division 020, or OAR chapter 413, division 015 or OAR 943-045;

(5) Commits fiscal improprieties;

(6) Fails to provide the authorized services required by the eligible individual;

(7) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by the individual;

(8) Has been intoxicated by alcohol or drugs while providing authorized services to the individual or while in the individual's home;

(9) Has manufactured or distributed drugs while providing authorized services to the individual or while in the individual's home; or

(10) Has been excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare or any other federal health care programs.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0705, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0210
Employment Relationship

(1) The relationship between the eligible individual and his or her Personal Care Attendant is that of employer and employee.

(a) The eligible individual carries primary responsibility for locating, interviewing, screening, hiring, scheduling work periods, training and terminating his or her own employees. The individual is also responsible for tracking and confirming the service hours worked by his or her employee.

(b) The eligible individual exercises control as the employer and directs the employee in the provision of the services.

(c) The Division or designee determines whether the employee meets the minimum qualifications to provide the services authorized by the Division and makes direct service payment(s) to the provider on behalf of the individual.

(2) In order to receive State Plan Personal Care services from a Personal Care Attendant, the individual must be able to:

(a) Meet the employer responsibilities described in section (1)(a) of this rule; or

(b) Designate a natural support as the individual's representative to meet these employer responsibilities.

(3) Termination and the grounds for termination of employment are determined by the employer. Eligible individuals have the right to terminate their employment relationships with their providers at any time and for any reason. It is the responsibility of the employer to establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal and any requirements for the employee to provide advance notice before resigning.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0710, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0220
Mandatory Reporting

All reporting requirements mandated under ORS 430.735 through ORS 430.768 must be followed.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0715, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0230
Service Entry

(1) Mental Health Provider Responsibilities:

(a) Assessment and Re-Assessment:

(A) The provider or designated person will meet in person with the individual to assess the individual's ability to perform the tasks listed in OAR 410-172-0200.

(B) The individual's natural support persons may participate in the assessment if requested by the individual.

(C) The Mental Health Provider will assess the individual's service needs, identify the resources meeting any, some or all of the person's needs, and determine if the individual is currently eligible for Personal Care services.

(D) The Mental Health Provider will meet with the individual in person at least once every 365 days to review the individual's service needs.

(E) The assessment must be approved by a practitioner recognized by AMH as a Qualified Mental Health Professional.

(b) Service Planning:

(A) The Mental Health Provider will prepare a service plan identifying those tasks for which the individual requires assistance and the monthly number of approved hours of service. Not to exceed 20 hours per Individual per month.

(B) The service plan will describe the tasks to be performed by the qualified provider and will approve the maximum monthly hours that can be reimbursed for those services.

(C) When developing service plans, Mental Health Providers will consider the cost effectiveness of services that adequately meet the individual's service needs.

(D) The service plan must be approved by a practitioner recognized by the AMH as a Qualified Mental Health Professional.

(E) Payment for State Plan Personal Care services must be approved by the Mental Health Provider and submitted to the Division based on the service needs of the individual as documented in the written service plan.

(c) Ongoing Monitoring and Approval:

(A) When there is an indication that the individual's Personal Assistance Service needs have changed, the Mental Health Provider will conduct a re-assessment in person with the individual (and any natural supports if requested by the individual).

(B) Following annual re-assessments and those conducted after a change in Personal Assistance Service needs, the Mental Health Provider will review service eligibility, the cost effectiveness of the service plan and whether the services provided are meeting the identified service needs of the individual. The Mental Health Provider may adjust the hours or services in the plan and will approve a new service plan, if appropriate, based on the individual's current service needs. The Mental Health Provider will then submit the adjusted service plan to the Division.

(d) Ongoing Case Management: The Mental Health Provider will provide ongoing coordination of Personal Care services, including approving changes in service providers and service hours, addressing risks, and providing information and referral to the individual when indicated.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0720, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0240
Service Entry

(1) Program Provider Responsibilities:

(a) Assessment and Re-Assessment:

(A) Program staff will meet in person with the individual to assess the individual's ability to perform the tasks listed in OAR 410-172-0180.

(B) The individual's natural support persons may participate in the assessment if requested by the individual.

(C) Program staff will assess the individual's service needs, identify the resources meeting any, some or all of the person's needs, and determine if the individual is currently eligible for Personal Care services.

(D) Program staff will meet with the individual in person at least once every 365 days to review the individual's service needs.

(b) Service Planning:

(A) The program staff will prepare a Plan of Care identifying those tasks for which the individual requires assistance and the monthly number of requested hours of service.

(B) The Plan of Care will describe the tasks to be performed by the Program staff and will request a maximum monthly number of hours of service.

(C) When developing Plans of Care, Program staff will consider the cost effectiveness of services that adequately meet the individual's service needs.

(D) Payment for Personal Care services must be prior authorized by the Division based on the service needs of the individual as documented in the written Plan of Care.

(c) Ongoing Monitoring and Approval:

(A) When there is an indication that the individual's Personal Assistance Service needs have changed, the provider will conduct a re-assessment in person with the individual (and any natural supports if requested by the individual).

(B) Following annual re-assessments and those conducted after a change in Personal Assistance Service needs, the Provider will review service eligibility, the cost effectiveness of the Plan of Care and whether the services provided are meeting the identified service needs of the individual. The Provider may adjust the hours or services in the plan and will submit a new Plan of Care, if appropriate, based on the individual's current service needs. The Provider will submit the adjusted Plan of Care to the Division.

(d) Ongoing Case Management: The Provider will provide ongoing coordination of Personal Care services, including changes in service hours, addressing risks, and providing information and referral to the individual when indicated.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0725, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0250
Program

The provider shall meet the following requirements:

(1) Possess the appropriate current and valid license, Letter of Approval and/or Certificate of Approval issued by the AMH for the mental health and addictions services provided, when required by rule;

(2) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Authority;

(3) Participate in the claim review process outlined in OAR 410-120-1397;

(4) Providers offering mental health rehabilitative services under this program must meet requirements for providers identified in OAR 410-172-0110; and

(5) Providers must be enrolled with the Division of Medicaid Assistance Programs (DMAP) as a mental health provider. Providers shall meet all requirements in OAR 410-120-1260, Medical Assistance Programs Provider Enrollment; 943-120-0310, Provider Requirements; and 943-120-0320, Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0726, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0260
Individual Eligibility

Individual eligibility for services under the 1915(i) State Plan HCBS will be determined by meeting the following requirements:

(1) Financial eligibility under the State's Medicaid State plan with an income that does not exceed 150 percent of the Federal Poverty level;

(2) A needs for daily assistance of at least one hour per day to perform at least two Personal Care Services as identified in OAR 410-172-0180 due to a disabling mental illness; and

(3) Eligibility determined by an external quality review organization, as identified by the Division.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0727, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0270
Service Prior Authorizations

(1) Eligibility for reimbursement through the 1915(i) State Plan Home and Community-Based Services Program requires authorization prior to the services as follows:

(a) For mental health rehabilitative services, as detailed in OAR 410-120-1320 and 410-172-0140 and

(b) For personal care and habilitative services, as detailed in OAR 410-172-0240.

(2) Mental health rehabilitative services and facility-based personal care and habilitative services must be reauthorized every 180 days or whenever there is a change in services offered.

(3) Personal care and habilitative services must be reauthorized every 360 days or whenever there is a change in services provided.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 7-2012(Temp), f. & cert. ef. 5-17-12 thru 11-11-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0729, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0280
Conditions of Service Provider Participation

Service provider must:

(1) Provide psychiatric residential treatment services to children eligible for Medicaid benefits under the terms of a written agreement with the Authority. The agreement must require that the psychiatric residential treatment facility and the services provided comply with all applicable state and federal requirements.

(2) Support and protect the fundamental human, civil, constitutional, and statutory rights of each child.

(3) Be accredited as a psychiatric residential treatment facility for children under age 21 by JCAHO, CARF, COA, or any other accrediting organization, with comparable standards, that is recognized by the State; be licensed by CAF; hold a Certificate of Approval per OAR 309-012-0130 through 309-012-0220 from AMH and be in compliance with the treatment services standards described in the ISSR.

(4) Provide a program consistent with standards set by JCAHO, CARF, COA, or any other accrediting organization, with comparable standards, that is recognized by the State.

(5) Provide a physical facility suitable for treatment of children with attention to proper safety and sanitation, housekeeping, and general environment. Buildings shall comply with all applicable building, occupancy, electrical, plumbing, and zoning codes.

(6) Obtain certification for the admission of children to the psychiatric residential treatment facility following the AMH's Certification of Need procedures.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0730, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0290
Eligibility and Admission Policy

(1) In considering a child for admission for psychiatric residential treatment services, Certification of Need procedures will certify that:

(a) Other treatment resources available in the community do not meet the treatment needs of the child;

(b) Proper treatment of the child's psychiatric condition requires services on a psychiatric residential treatment basis under the direction of licensed medical practitioner;

(c) The services can reasonably be expected to improve the child's condition or prevent further regression so that psychiatric residential treatment services may no longer be needed; and

(d) The child has a principal diagnosis on Axis I of a completed 5-Axes DSM diagnosis that is not solely a result of mental retardation or other developmental disabilities, epilepsy, drug abuse, or alcoholism.

(2) The child must be eligible for medical assistance under Medicaid, according to procedures established by the Division, and meet the criteria for admission to psychiatric residential treatment services as defined by these rules.

(3) The Division shall authorize payment for psychiatric residential treatment services for children upon the approval of a certificate of need by the Division or its agent.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10 ; Renumbered from 309-016-0735, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0300
Admission Procedures Related to Payment

(1) Admission procedures for children eligible for Medicaid will be reviewed through an independent psychiatric review process established by the Division to certify the need for services.

(2) The referring source or the facility will make available for the Certificate of Need (CONS) process, the following information about the referred child:

(a) Letter of support for admission from the identified county of responsibility or qualified tribal representative;

(b) Level of Need Determination screening outcome;

(c) Child and Adolescent Service intensity instrument (CASII) or Early Childhood Service Intensity Instrument (ECSII);

(d) Identified Intensive Community Treatment and Support (ICTS) provider;

(e) ICTS care coordinator;

(f) Child and family team members, and

(g) Copies of related available clinical documents such as updated mental health assessments, individual plan of care and service coordination plans.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0740, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0310
Service Criteria

Children shall be served in the least restrictive, least intensive setting based on their treatment history, degree of impairment, current symptoms and the extent of family and other supports. The provider must recommend the appropriate level of care to the child and parent or guardian when a more restrictive or less restrictive level of care is determined to be medically necessary.

(1) The following criteria are used to determine the appropriateness of continued stay:

(a) The child is making observed progress toward identified treatment goals as documented in the individual plan of care, but the measurable treatment objectives necessary to reach the goals have not been completed;

(b) The child made no documented progress toward treatment goals, but the individual plan of care and measurable objectives necessary to reach the goals have been reviewed by the LMP and modified in order to reevaluate the child's treatment needs, clarify the nature of the identified problems, and/or initiate new therapeutic interventions; or

(c) The child exhibits new symptoms or maladaptive behaviors that justify continuation and can be safely and effectively treated at a commu-

nity-based residential level of care. The individual service and support plan has been revised accordingly.

(2) A planned transfer will occur when the following criteria are met:

(a) The child's targeted symptoms and maladaptive behaviors have abated to an established baseline level as documented by the attainment of specific goals and measureable objectives in the individual plan of care; or

(b) The child exhibits new symptoms and maladaptive behaviors which may not be safely or effectively treated at this level of care; or

(c) The child is not benefiting from treatment and made no progress toward specific treatment goals or measurable objectives even though appropriate individual service and support plan reviews and revisions were conducted.

(3) Planned transfer will be consistent with the transfer criteria established by the interdisciplinary team and documented in the ISSP. In addition:

(a) Providers will not transfer an individual unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care; and

(b) If the determination is made to admit the child to acute care, the provider will not conclude services during the acute care stay unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care following the acute care stay.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12; Renumbered from 309-016-0745, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0320
Payments

(1) Payments will be made for the provision of active psychiatric residential treatment services, including approved leave for children eligible for such services under Medicaid. If active treatment is not documented during any period in which Division payments are made on behalf of a child, the Division may recoup such payments.

(2) The Division will pay for the day of admission but not for the day of transfer or discharge.

(3) Medicaid eligible children receiving psychiatric residential treatment services will be subject to periodic review by an interdisciplinary team to determine medical appropriateness and quality of services. If a review reveals that a child received an inappropriate level of care, i.e., less than active treatment, payment will not be allowed under these rules.

(4) Payment for planned absences from the program such as home care visits, and transitions shall be allowed if the absences are:

(a) Based on the individual clinical needs of the child; and

(b) Specified in the child's Individual Service and Support Plan's measurable objectives and/or transfer plan; and

(c) Documented in individual service notes; and

(d) The duration of any single planned absence is no more than three consecutive days, unless a longer duration is authorized in writing by the Division.

(5) Payment for unplanned absences from the program such as runaway, hospitalization, and detention (check on eligibility) shall be allowed if;

(a) The provider clearly documents in the child's individual service record regular and ongoing service coordination efforts undertaken by the program during the unplanned absence; and

(b) The provider clearly documents in the child's individual service record that the child will be returned to the program when the unplanned absence is resolved; and

(c) The duration of any single unplanned absence is no more than seven consecutive days, unless longer duration is authorized in writing by the Division.

(6) Payment for unplanned absences from the program shall be disallowed if the child is not returned to the program, unless the interdisciplinary team, in consultation with the child's parent(s) or guardian or provider of the next level of care determines that the child requires a more or less restrictive level of care.

(7) Planned absences from the program which are not indicated in the child's Individual Services and Supports Plan and/or transfer plan shall be considered unplanned absences and payment will be disallowed.

(8) Payments for planned absences must be made consistent with 42CFR447.40.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; MHS 14-2011(Temp), f. 12-29-11, cert. ef. 1-1-12 thru 6-28-12; MHS 10-2012, f. & cert. ef. 6-19-12; Renumbered from 309-016-0750, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0330
Conditions of Service Provider Participation

(1) Provider shall meet all requirements for Medicaid payment in general and specifically for PRTS providers as stated in OAR 410-172-0280 thrugh 410-172-0320.

(2) The admitting physician must have authorized the admission and that authorization is evident in record.

(3) Children's Sub-Acute Psychiatric Care services must be provided consistent with the general standards outlined above (OAR 410-172-0000 through 410-172-0060) and the Rehabilitative mental Health Services requirements outlined above (OAR 410-172-0110 through 410-172-0160).

(4) The cost of Room and Board is not an allowable cost of Children's Sub-Acute Psychiatric Care services.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 8-2010(Temp), f. 6-15-10, cert. ef. 7-1-10 thru 8-28-10; MHS 11-2010, f. & cert. ef. 8-25-10; Renumbered from 309-016-0755, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0340
Conditions of Service Provider Participation

The provider shall meet the following requirements:

(1) Possess the appropriate current and valid License, Letter of Approval and/or Certificate of Approval issued by AMH provided as outlined in OAR 415-012-0020;

(2) Develop a Cost Allocation Plan to support the Provider's Usual and Customary Charge. Usual and customary charge is defined in OAR 410-120-0000;

(3) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the, Authority;

(4) Participate in the claim review process outlined in OAR 410-120-1397; and

(5) Possess a contract with the Authority to provide Alcohol and Drug Residential Treatment to Medicaid eligible individuals or be a subcontractor of an AMH Alcohol and Drug Residential treatment contractor.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0760, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0350
Individual Provider Enrollment

Providers shall meet all requirements in OAR 410-120-1260, Medical Assistance Programs Provider Enrollment, 943-120-0310 Provider Requirements and 943-120-0320, Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0765, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0360
Payment

(1) Payments will be made for the provision of active A&D residential treatment services, including approved leave for individuals for such services under Medicaid. If active treatment is not documented during any period in which Division payments are made on behalf of the individual, the Division may recoup such payments.

(2) Payment for planned absences from the program such as hospitalizations, home visits, and transitions shall be allowed if the absences are:

(a) Based on the individual clinical needs; and

(b) Specified in the Individual Service and Support Plan's measurable objectives and/or transfer plan; and;

(c) The provider clearly documents in the individual service record ongoing daily treatment service provided by the program during the absence; and

(d) The bed is not filled by any other individual during the absence; and

(e) The duration of any single planned absence is no more than seven consecutive days, unless a longer duration is authorized in writing by the Division

(3) Payment for unplanned absences from the program such as hospitalizations and incarceration (check Medicaid eligibility) shall be allowed if;

(a) The provider clearly documents in the individual service record ongoing daily treatment service provided by the program during the unplanned absence; and

(b) The provider clearly documents in the individual service record that the individual will be returned to the program when the unplanned absence is resolved and the bed is not filled by any other individual during the absence; and

(c) The duration of any single unplanned absence is no more than three consecutive days, unless longer duration is authorized in writing by the Division.

(4) Payment for a reserved bed is not covered under Medicaid consistent with 42 CFR 447.40

(5) Room and Board is not covered under Medicaid

(6) Payment will be made for each daily unit of service billed, reimbursed at the contracted per diem rate. A daily unit of service is defined in OAR 410-172-0320(2).

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0770, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0370
Sanctions

Sanctions will be imposed on Providers when necessary in accordance with OAR 410-120-1400 through 410-120-1460 Medical Assistance Programs Provider Sanctions and Types and Conditions of Sanction.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0775, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0380
Individual Eligibility

To be eligible for Alcohol and Drug Residential Treatment service under these rules the individual must be a current Medicaid recipient of at least one of the following programs defined in OAR 410-200-0015:

(1) Extended Medical (EXT);

(2) Medical Assistance Assumed (MAA);

(3) Medical Assistance to Families (MAF);

(4) Oregon Health Plan (OHP), OHP means OHP-CHP, OHP-OPC, OHP-OPP, OHP-OPU and OHP-OP6;

(5) General Assistance Medical (GAM);

(6) Oregon Supplemental Income Program Medical (OSIPM);

(7) Medical Coverage for Children in Substitute or Adoptive Care (SAC);

(8) Healthy Kids Connect (HKC); or

(9) Continuous Eligibility (CEC).

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025 & 414.231
Stats. Implemented: ORS 411.404, 411.704, 414.025, 414.231, 414.826 & 414.839
Hist.: MHS 12-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 12-27-12; MHS 14-2012, f. & cert. ef. 11-5-12; Renumbered from 309-016-0780, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0390
Conditions of Service Provider Participation

Provider shall meet the following requirements:

(1) Possess the appropriate current and valid License, Letter of Approval and/or Certificate of Approval issued by the AMH provided as outlined in OAR 415-012-0000 to 415-012-0090;

(2) Develop a Cost Allocation Plan to support the Provider's Usual and Customary Charge. Usual and customary charge is defined in OAR 410-120-0000;

(3) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Authority;

(4) Participate in the claim review process outlined in OAR 410-120-1397; and

(5) Center to be in compliance with 415-050-0000 to 415-050-0095.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 11-2013, f. & cert. ef. 9-23-13; Renumbered from 309-016-0781, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0400
Provider Enrollment

Providers shall meet all requirements in OAR 410-120-1260, Medical Assistance Programs Provider Enrollment, 943-120-0310 Provider Requirements, and 943-120-0320 Provider Enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 11-2013, f. & cert. ef. 9-23-13; Renumbered from 309-016-0806, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0410
Payment

(1) The Division will make payment in compliance with 42 CFR 447.10. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Oregon Health Authority Electronic Data Interchange (EDI) rules, OAR 943-120-0100 through 943-120-0200. The Division may require that payment for services be made only after review by the Division.

(2) The Division sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the Division's maximum allowable amount or the reimbursement specified in the individual program Provider rules: The Division's maximum allowable rate setting process uses a methodology that is based on the existing Medicaid fee schedule with adjustments for legislative changes and payment levels. The rates are updated periodically and posted on the Division's web site

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 414.725 & 414.737, 430.640, 430.705 & 430.715
Hist.: MHS 11-2013, f. & cert. ef. 9-23-13; Renumbered from 309-016-0811, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0420
Sanctions

Sanctions will be imposed on Providers when necessary in accordance with OAR 410-120-1400 through 410-120-1460 Medical Assistance Programs Provider Sanctions and Types and Conditions of Sanction

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: MHS 11-2013, f. & cert. ef. 9-23-13; Renumbered from 309-016-0816, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0430
Individual Eligibility

(1) To be eligible for Detoxification Treatment services under these rules the individual must be a current Medicaid recipient.

(2) Providers are responsible to verify an individual is a Medicaid recipient as outlined in OAR 410-120-1140

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065, 414.025 & 411.400
Hist.: MHS 11-2013, f. & cert. ef. 9-23-13; Renumbered from 309-016-0821, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0440
Supported Employment (SE) Overview

(1) Supported Employment is an evidence-based practice for individuals with serious mental illness.

(2) Supported Employment is characterized by:

(a) Emphasis on competitive employment;

(b) Every person who is interested in work is eligible for services regardless of symptoms, substance use disorders, treatment decisions, or any other issue;

(c) Employment services are integrated with mental health treatment;

(d) Individuals have access to personalized benefits planning;

(e) Job search begins soon after a person expresses interest in working; and

(f) Client preferences for jobs, and preferences for service delivery, are honored.

(3) Supported Employment services include, but are not limited to:

(a) Job development;

(b) Supervision and job training;

(c) On-the-job visitation;

(d) Consultation with the employer;

(e) Job coaching;

(f) Counseling;
(g) Skills training; and/or
(h) Transportation.
Stat. Auth.: ORS 414.032, 414.615, 414.625 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: MHS 1-2013(Temp), f. & cert. ef. 1-7-13 thru 7-1-13; MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0825, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0450
Supported Employment Providers

(1) To be eligible for Medicaid reimbursement, SE services must be provided by a Qualified SE Provider.

(2) To become a Qualified SE Provider, an agency must provide the evidence-based practice of Individual Placement and Support Supported Employment (IPS SE), and submit a copy to AMH of a fidelity review conducted by a Fidelity Reviewer approved by AMH, which resulted in a score of 100 or better.

(3) Providers implementing IPS SE may become a Provisionally Qualified SE Provider by submitting a request to AMH with a letter of support which indicates receipt of technical assistance and training from an AMH approved IPS SE Trainer. Medicaid reimbursements to a Provisionally Qualified SE Provided end after 12 months. This option is intended only for providers initiating supported employment services.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0830, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0460
Supported Employment Fidelity Requirements

(1) In order to maintain designation as a Qualified SE Provider, a provider must submit to AMH an annual fidelity review report, conducted by an AMH approved reviewer, which indicates a minimum score of 100.

(2) Qualified SE Providers achieving a fidelity score of 115 or higher are eligible to extend their review period to every 18 months.

(3) Fidelity reviews will be conducted utilizing the most current Dartmouth College IPS Fidelity Scale available at www.oregon.gov/oha/amh.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0835, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0470
Failure to Meet Fidelity Standards

If a Qualified SE Provider does not receive a minimum score of 100 on a fidelity review, the following shall occur:

(1) Technical assistance shall be made available for a period of 90-days to address problem areas identified in the fidelity review.

(2) At the end of the 90-day period, a follow-up review will be conducted by an AMH approved reviewer.

(c) The provider shall forward a copy of the amended fidelity review report to AMH.

(3) If the 90-day re-review results in a score of less than 100, the agency's designation as a Qualified SE Provider may be suspended for up to one calendar year.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0837, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0480
Failure to Meet Fidelity Standards

(1) ACT is an evidence-based practice for individuals with a serious mental illness.

(2) ACT is characterized by:
(a) A team approach;
(b) In vivo services;
(c) A caseload of approximately 10:1;
(d) Time-unlimited services;
(e) Flexible service delivery;
(f) A fixed point of responsibility; and
(g) 24/7 crisis availability

(3) ACT services include, but are not limited to:
(a) Hospital discharge planning;
(b) Case management;
(c) Symptom management;
(d) Psychiatry services;
(e) Nursing services;
(f) Co-occurring substance use disorder services;
(g) Vocational services;
(h) Life skills training; and/or
(i) Peer support services.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0840, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0490
ACT Providers

(1) To be eligible for Medicaid reimbursement, ACT services must be provided by a Qualified ACT Provider.

(2) To become a Qualified ACT Provider, an agency must provide the evidence-based practice of ACT, and submit to AMH a copy of a fidelity review conducted by an AMH approved ACT Fidelity Reviewer, with a minimum score of 114.

(3) Agencies may become a Provisionally Qualified ACT Provider by submitting to AMH a request, with a letter of support which indicates receipt of technical assistance and training from an AMH approved ACT Trainer. Provisional ability to receive Medicaid reimbursement will end after 12 months. This option is intended only for providers initiating ACT services.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0845, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0500
ACT Fidelity Requirements

(1) In order to maintain designation as a Qualified ACT Provider, an agency must submit to AMH an annual fidelity review report by an AMH approved reviewer, with a minimum score of 114.

(2) Qualified Providers achieving a fidelity score of 128 or better are eligible to extend their review period to every 18 months.

(3) Fidelity reviews will be conducted utilizing the Substance Abuse and Mental Health Services ACT Toolkit Fidelity Scale, available at www.oregon.gov/oha/amh

(4) Providers approved by AMH to bill Medicaid for ACT services prior to January 1, 2013, will be deemed Qualified ACT Providers through July 1, 2014. In order to maintain their designation as a Qualified ACT Provider, these providers must submit to AMH, prior to July 1, 2014, a copy of a fidelity review conducted by an AMH approved ACT Fidelity Reviewer with a minimum score of 114.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0850, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0510
Failure to Meet Fidelity Standards

If a Qualified ACT Provider does not receive a minimum score of 114 on a fidelity review, the following shall occur:

(1) Technical assistance shall be made available for a period of 90-days to address problem areas identified in the fidelity review.

(2) At the end of the 90-day period, a follow-up review will be conducted by an AMH approved reviewer.

(3) The provider shall forward a copy of the amended fidelity review report to AMH.

(4) If the 90-day re-review results in a score of less than 114, the agency's designation as a Qualified ACT Provider may be suspended for up to one calendar year.
Stat. Auth.: ORS 413.042, 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715
Hist.: MHS 5-2013, f. & cert. ef. 6-5-13; Renumbered from 309-016-0855, DMAP 48-2014, f. & cert. ef. 8-1-14; Suspended by DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0600
Acronyms and Definitions

(1) "Active Treatment" means a service provided as prescribed in a professionally developed and supervised Individual Services and Supports Plan to address or improve a behavioral health condition.

(2) "Adult" means an individual 18 years of age or older or an emancipated minor. An individual with Medicaid eligibility who is in need of services specific to children, adolescents, or young adults in transition must be considered a child until age 21. Adults who are between the ages of 18 and 21 who are considered children for purposes of these rules must have all rights afforded to adults as specified in these rules.

(3) "AMH" means the Addictions and Mental Health Division of the Oregon Health Authority.

(4) "ASAM PPC" means the most current publication of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-related Disorders, which is a clinical guide used in matching individuals to appropriate levels of care.

(5) "Authority" means the Oregon Health Authority.

(6) "Authorization" means authorization granted by the responsible agency, office, or organization for payment prior or subsequent to the delivery of services.

(7) "Behavioral Health" means mental health, mental illness, addiction disorders, and substance use disorders.

(8) "Behavioral Health Services" means medically appropriate services rendered or made available to a recipient for treatment of a behavioral health or substance use disorders diagnosis.

(9) "Behavioral Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of the recipient's need for behavioral health services. It involves collection and assessment of data pertinent to the individual's behavioral health history and current behavioral health status obtained through interview, observation, testing, and reviews of previous treatment records. It concludes with determination of a DSM diagnosis or other justification for behavioral health services.

(10) "Billing Provider (BP)" means an individual , agent, business, corporation, clinic, group, or other entity who submits claims to or receives payment from the Division on behalf of a rendering provider and has been delegated the authority to act on behalf of the rendering provider.

(11) "Certificate" means the document awarded by the Authority's AMH division signifying that a specific, named organization is judged by AMH to operate in compliance with applicable rules.

(12) "Child" or "Children" means an individual under the age of 18. An individual with Medicaid eligibility who is in need of services specific to children, adolescents, or young adults in transition is considered a child until age 21.

(13) "Clinical Nurse Specialist" means a registered nurse approved and certified by the Board of Nursing to provide health care in an expanded specialty role.

(14) "Commission on Accreditation of Rehabilitation (CARF)" means an organization that accredits behavioral health care and community providers based on the current edition of the "CARF Behavioral Health" standards manual.

(15) "Community Mental Health Program (CMHP)" means an entity that is responsible for planning and delivery of services for individuals with behavioral health or substance use disorder conditions, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(16) "Coordinated Care Organization (CCO)" has the meaning given that term in OAR 410-141-0000.

(17) "Current Procedural Terminology (CPT)" means the physicians' CPT, which is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(18) "Date of Service" means the date on which the recipient receives medical services or items, unless otherwise specified in the appropriate provider rules.

(19) "Division" means the Division of Medical Assistance Programs of the Oregon Health Authority.

(20) "Fidelity Review" means an on-site assessment utilizing a standardized, reliable, and valid evaluation tool to determine the degree to which an evidence-based practice is being implemented.

(21) "Flexible Service" means a service that is an alternative or addition to a service that is as likely or more likely to effectively treat the behavioral health condition or substance use disorder condition as documented in the recipient's clinical record.

(22) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures, and supplies. HCPCS consists of:

(a) Level 1 — American Medical Association's Physician's Current Procedural Terminology (CPT);

(b) Level II — National codes.

(23) "Health Services Commission (HRC)" means a commission that, among other duties, develops and maintains a list of health services ranked by priority from the most to the least important representing the comparative benefits of each service to the population served.

(24) "Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA)" means the federal law (Public Law 104-191, August 21, 1996) to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information, and guarantee security and privacy of health information.

(25) "JCAHO (Joint Commission: Accreditation, Health Care, Certification)" means the commission that accredits psychiatric residential treatment facilities according to its current edition of the "Comprehensive Accreditation Manual for Hospitals" and the "Comprehensive Accreditation Manual for Behavioral Health Care."

(26) "Letter" means the document awarded to providers by AMH indicating the provider has complied with specific program requirements or administrative rule.

(27) "Level of Care" means the type, frequency, and duration of medically appropriate services provided to a recipient of behavioral health services.

(28) "Level of Care Determination" means the standardized process implemented to establish the type, frequency, and duration of medically appropriate services required to treat a diagnosed behavioral health condition.

(29) "Liability Insurance" means insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(30) "Mental Health Intern" means an individual who meets qualifications for QMHA but does not have the necessary graduate degree in psychology, social work, or in a behavioral science field to meet the educational requirement of QMHP. The individual must:

(a) Be currently enrolled in a graduate program for a master's degree in psychology, social work, or in a behavioral science field;

(b) Have a collaborative educational agreement with the CMHP or other provider and the graduate program;

(c) Work within the scope of practice and competencies identified by the policies and procedures for credentialing of clinical staff as established by the provider; and

(d) Receive, at minimum, weekly supervision by a qualified clinical supervisor employed by the provider of services.

(31) "Natural Support" means resources and supports including, but not limited to, relatives, friends, significant others, neighbors, roommates, or the community who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support." The natural support must have the skills, knowledge, and ability to provide the needed services and supports.

(32) "Non-Paid Provider" means a provider employed by an enrolled entity who is able to order, refer, or prescribe services for an OHP recipient. These providers must comply with the federal database checks requirements listed in 42 CFR 455.436, which requires Division provider enrollment.

(33) "Nursing Services" means health care services provided to the recipient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by state law.

(34) "Oregon Health Plan (OHP)" means the Medicaid and Children's Health Insurance (CHIP) Demonstration Project that expands Medicaid and CHIP eligibility beyond populations traditionally eligible for Medicaid to other low-income populations and Medicaid and CHIP services under the State Plan.

(35) "OLRO" means the Office of Licensing and Regulatory Oversight (OLRO) of the Department of Human Services responsible for the licensing, regulatory and corrective action functions for Developmentally Disabled (DD), Adults and People with Disabilities (APD), and Child Welfare (CW) providers living in community settings including adult foster homes, assisted living facilities, residential care facilities, nursing homes, supportive living and employment programs for people with DD, and private child care agency licensing.

(36) "Paid Provider" means a provider who meets the requirements in this rule for enrollment, billing, and payment.

(37) "Peer Support Specialist" means an individual providing peer delivered services to an individual or family member with similar life experience. A peer support specialist must be a self-identified individual:

(a) Currently or formerly receiving mental health services; or

(b) In recovery from an addiction disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs;

(c) In recovery from problem gambling; or

(d) A family member of an individual who is a current or former recipient of addictions or mental health services.

(38) "Physician" means an individual licensed to practice medicine pursuant to state law of the state in which he or she practices medicine or an individual licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government. A physician may be an individual licensed under ORS 677 or 685.

(39) "Physician Assistant" means an individual licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(40) "Procedure Code" means a code assigned to a service from either of the two national code sets (CPT or HCPCS).

(41) "Provider Organization" means a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) The group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility, or organization;

(e) An agent if the entity solely submits billings on behalf of providers and payments are made to each provider.

(42) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, or mental health organization that contracts with the Authority on a case managed, prepaid, capitated basis under OHP. PHPs may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(43) "Prior Authorization (PA)" means payment authorization for specified medical services or items given by Authority staff or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(44) "Qualified Mental Health Associate (QMHA)" means an individual delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the CMHP or designee:

(a) A bachelor's degree in a behavioral science field; or

(b) A combination of at least three year's relevant work, education, training, or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment, and service terminology and to apply the concepts; and

(C) Provide psychosocial skills development and to implement interventions prescribed on a treatment plan within the scope of his or her practice.

(45) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other provider meeting the following minimum qualifications as documented by the CMHP or designee:

(a) Graduate degree in psychology;

(b) Bachelor's degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts; assess family, social, and work relationships; conduct a mental status examination; document a DSM diagnosis; write and supervise a treatment plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and group therapy within the scope of his or her practice.

(46) "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 recipients; formerly known as a Peer Review Organization.

(47) "Recipient" means an individual currently eligible for medical assistance.

(48) "Recovery Assistant" means a provider who provides a flexible range of services. Recovery assistants provide face-to-face services in accordance with a service plan that enables a participant to maintain a home or apartment, encourages the use of existing natural supports, and fosters involvement in treatment, social, and community activities. A recovery assistant shall:

(a) Be at least 18 years old;

(b) Meet the background check requirements described in OAR 410-180-0326;

(c) Conform to the standards of conduct as described in OAR 410-180-0340.

(49) "Rendering provider" means an individual, facility, institution, corporate entity, or other organization that supplies health services or items, also termed a provider, or bills, obligates, and receives reimbursement on behalf of a provider of services, also termed a billing provider (BP). The term rendering provider refers to both providers and BP unless otherwise specified.

(50) "Residential Treatment Facility (RTF)" means a facility licensed by the AMH that is operated to provide services on a 24-hour basis for six or more residents.

(51) "Residential Treatment Home (RTH)" means a facility licensed by AMH that is operated to provide services on a 24-hour basis for five or fewer residents.

(52) "Residential Substance Use Disorder program" means a publicly or privately operated program as defined in ORS 430.010 that provides assessment, treatment, rehabilitation and 24-hour observation and monitoring for individuals with alcohol and other drug dependence, consistent with Level III of American Society of Addiction Medicine (ASAM) PPC-2R.

(53) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility licensed by AMH or portion thereof that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates, or other closures. Locking devices must be installed in accordance with building code requirements.

(54) "Service Plan" means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the desired outcomes of service.

(55) "Substance Use Disorders Treatment Program" means a program that provides assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for individuals with alcohol or other drug use disorders and their family members or significant others.

(56) "Telemedicine" means the use of telephonic or electronic communications by a provider to deliver health services to a recipient.

(57) "Treatment" means a planned, individualized program of medical, psychological, or rehabilitative procedures, experiences, and activities designed to relieve or minimize mental, emotional, physical, or other symptoms or social, educational, or vocational disabilities resulting from or related to a behavioral health or substance use disorder diagnosis.

(58) "Utilization Review (UR)" means the process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0610
Provider Enrollment

(1) Providers must be enrolled with the Division as a behavioral health provider. Paid providers of behavioral health services must possess a current and valid license, letter, or certificate.

(2) Providers must provide services within the scope of professional standards and practice defined by the providers licensing board or certifying organization.

(3) Providers shall meet all requirements in OAR 410-120-1260 (Medical Assistance Programs Provider Enrollment), OAR 943-120-0310 (Provider Requirements), and OAR 943-120-0320 (Provider Enrollment).

(4) Providers must not be included on any US Office of Inspector General Exclusion lists.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0620
Documentation Standards

(1) OHP providers must maintain records that fully support the extent of services for which payment has been requested and provide the records to the Division upon request

(2) All records must document the specific service provided, the number of services comprising the service provided, the extent of the service provided, the dates on which the service was provided, and the individual who provided the service.

(3) Clinical records must document the recipient's diagnosis and the medical need for the service.

(4) The record must be annotated each time a service is provided and clearly indicate or be signed or initialed by the individual providing the service.

(5) Information contained in the record must be appropriate in quality and quantity to meet the professional standards applicable to the provider and any additional standards for documentation found in these rules, other Division rules, and pertinent contracts.

(6) For AMH certified providers, in addition to meeting the requirements in this rule, clinical documentation for behavioral health services must also comply with the requirements in OAR 309-019-0135 through 309-019-0140, and clinical documentation standards for substance use disorder services must comply with OAR 309-018-0140 through 309-018-0150.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0630
Medically Appropriate

(1) In addition to the definition of medically appropriate in OAR 410-120-0000 for behavioral health services, "medically appropriate" means the services and supports required to diagnose, stabilize, care for, and treat a behavioral health condition.

(2) The Division shall make payment for medically appropriate behavioral health services when the services or supports are:

(a) Rendered by a provider whose training, credentials, or license is appropriate to treat the identified condition and deliver the service;

(b) Based on the standards of evidence-based practice, and the services provided are appropriate and consistent with the diagnosis identified in the behavioral health assessment;

(c) Provided in accordance with an individualized service plan and appropriate to achieve the specific and measurable goals identified in the service plan;

(d) Not provided solely for the convenience of the recipient, the recipient's family, or the provider of the services or supplies;

(e) Not provided solely for recreational purposes;

(f) Not provided solely for research and data collection;

(g) Not provided solely for the purpose of fulfilling a legal requirement placed on the recipient.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0640
Behavioral Health Services Fee Schedule

(1) The Division shall pay providers based on the Behavioral Health Services Fee Schedule (fee-for-service (FFS) payment rates for behavioral health services) posted on the Authority web site.

(2) Payment shall be made at each provider's usual and customary charge or the Division's published reimbursement upper payment limit, whichever is less, minus payments received or due from other payers. Payments to other specified providers shall be made according to other approved schedules.

(3) The Division's maximum allowable rate-setting process uses a methodology that is based on the existing Medicaid fee schedule with adjustments for legislative changes and payment levels. The rates are updated periodically and posted on the Behavioral Health Services Fee Schedule web site at www.oregon.gov/oha/healthplan/pages/feeschedule.aspx.

(4) Limitations contained in the Behavioral Health Services Fee Schedule, such as the maximum rate and the amount, duration, and scope of services provided, are subject to change at the discretion of the Division. The Division shall notify providers of changes in writing.

(5) Payment shall be made for services listed in the Medicaid Behavioral Health Procedure Fee Schedule that are rendered to Medicaid-eligible individuals by a qualified provider during the period in which the provider is enrolled with the Division.

(6) For cost-reimbursed services, the provider must maintain adequate records to thoroughly explain how the amounts reported on the cost statement were determined. The records must be accurate and in sufficient detail to substantiate the data reported. Providers whose rates are paid based on a collective bargaining agreement are not exempt from this requirement.

(7) Payment by the Division does not limit the Authority 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 review, audit, or other post-payment review determines that payment for the service was not provided in accordance with applicable Oregon Administrative Rules or the service does not meet the criteria for quality or medical appropriateness of the care.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0650
Prior Authorization

(1) Some services or items covered by the Division require authorization before the service may be provided. Services requiring prior authorization are published on the Medicaid Behavioral Health Services Fee Schedule.

(2) The Division shall authorize payment for the type of service or level of care that meets the recipient's medical need and that has been adequately documented.

(3) The Division shall only authorize services that are medically appropriate and for which the required documentation has been supplied. The Division may request additional information from the provider to determine medical appropriateness.

(4) Documentation submitted when requesting authorization must support the medical justification for the service. The authorization request must contain:

(a) A cover sheet detailing relevant provider and recipient Medicaid numbers;

(b) Requested dates of service;

(c) HCPCS or CPT procedure code requested; and

(d) Amount of service or units requested;

(e) A behavioral health assessment and service plan meeting the requirements described in OAR 309-019-0135 through 309-019-0140; or

(f) Any additional supporting clinical information supporting medical justification for the services requested;

(g) For substance use disorder services, the Division uses the American Society of Addiction Medicine (ASAM) Patient Placement Criteria second edition-revised (PPC-2R) to determine the appropriate level of SUD treatment of care. Providers must use the ASAM;

(h) For Applied Behavioral Analysis services, the Division requires submission of:

(A) An evaluation as described in OAR 410-172-0770(1) from a physician or psychologist experienced in the diagnosis and treatment of autism;

(B) An order for treatment as described in OAR 410-172-0770(1)(e) from a physician or psychologist experienced in the diagnosis and treatment of autism;

(C) A functional analysis and a behavior treatment plan from a BCBA or a BCaBA;

(D) A copy of the Authority's service intensity scale (SIS) supporting the level of service requested.

(i) Residential treatment services for children may require a letter of approval by a designated quality improvement organization (QIO) as defined in this rule;

(j) Some services require additional approval or authorization by a physician, the Authority, or designee. Services requiring additional approval are listed on the Behavioral Health Fee Schedule or described in this rule.

(5) The Division may not authorize services under the following circumstances:

(a) The request received by the Division was not complete;

(b) The provider did not hold the appropriate license, certificate, or credential at the time services were requested;

(c) The recipient was not eligible for Medicaid at the time services were requested;

(d) The provider cannot produce appropriate documentation to support medical appropriateness, or the appropriate documentation was not submitted to the Division;

(e) The services requested are not in compliance with OAR 410-120-1260 through 410-120-1860;

(f) Authorization for payment may be given for a past date of service if:

(A) On the date of service, the recipient was made retroactively eligible or was retroactively dis-enrolled from a Coordinated Care Organization (CCO) or Prepaid Health Plan (PHP);

(B) The services provided meet all other criteria and Division or Authority administrative rules and;

(C) The request for authorization is received within 30 days of the date of service.

(6) Any requests for authorization after 30 days from date of service require documentation from the provider that authorization could not have been obtained within 30 days of the date of service.

(7) Payment authorization is valid for the time period specified on the authorization notice but may not exceed 12 months unless the recipient's benefit package no longer covers the service, in which case the authorization shall terminate on the date coverage ends.

(8) Prior authorization of services shall be subject to periodic utilization review and retrospective review to ensure services meet the definition of medical appropriateness.

(9) All applicants for Title XIX or general assistance must complete Form DMAP 415A or 415B authorizing the release of any records regarding his or her health. When requested by the Division or its medical review contractor, behavioral health providers must submit sufficient medical documentation to verify the medical necessity, quality, and appropriateness of treatment and appropriateness of the length of stay for residential treatment services.

(10) Payments shall be made for the provision of active treatment services. If active treatment is not documented during any period in which the Division has prior authorized services, the Division may limit or cancel prior authorization or recoup such payments.

(11) If providers fail to comply with requests for documents for purposes of verifying medical appropriateness within the specified timeframes, the Authority may deem the records non-existent and cancel prior authorization.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0660
Rehabilitative Mental Health Services

(1) Rehabilitative mental health services means medical or remedial services recommended by a physician or other practitioner to reduce impairment to an individual's functioning associated with the symptoms of a mental disorder or substance use disorder and are intended to restore functioning to the highest degree possible.

(2) Rehabilitative behavioral health services must be recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law.

(3) When appropriate, rehabilitative behavioral health services are provided under ongoing oversight of an LMP.

(4) Paid providers of rehabilitative behavioral health services must meet one of the following qualifications or hold at least one of the following educational degrees and valid licensure:

(a) Physician or Physician Assistant licensed by the Oregon Medical Board;

(b) Advanced Practice Nurse including Clinical Nurse Specialist and Certified Nurse Practitioner licensed by the Oregon Board of Nursing;

(c) Psychologist licensed by the Oregon Board of Psychology;

(d) Professional Counselor or Marriage and Family Therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists;

(e) Clinical Social Worker licensed by the Oregon Board of Licensed Social Workers;

(f) Certificate issued by AMH as described in OAR 309-012-0130 through 309-012-0220.

(5) Non-paid providers must be employed by a provider organization certified by AMH as described in OAR 309-012-0130 through 309-012-0220 and meet one of the following qualifications:

(a) Qualified mental health professional;

(b) Qualified mental health associate;

(c) Mental health intern; or

(d) Peer-Support Specialist.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0670
Substance Use Disorder Treatment Services

(1) Substance Use Disorder (SUD) treatment services include, but are not limited to, screening; assessment; individual counseling; group counseling; individual family, group or couple counseling; care coordination; medication-assisted treatment; medication management; collection and handling of specimens for substance analysis; interpretation services; detoxification for substance use disorders; synthetic opioid treatment; and acupuncture.

(2) Paid providers of SUD treatment services shall meet one of the following requirements:

(a) Outpatient substance use disorder providers must have a certificate issued by AMH as described in OAR chapter 415, division 12;

(b) Any facility that meets the definition of a residential treatment facility for substance-dependent individuals under ORS 443.400 or a detoxification center as defined in ORS 430.306 must have a certificate issued by AMH as described in OAR chapter 415, division 012;

(c) Synthetic opioid treatment programs must meet the requirements described in OAR chapter 415, division 20;

(d) Substance use detoxification programs must meet the standards described in OAR 415, chapter 50;

(e) Physician or Physician Assistant licensed by the Oregon Medical Board;

(f) Advanced Practice Nurse including Clinical Nurse Specialist and Certified Nurse Practitioner licensed by the Oregon Board of Nursing;

(g) Professional Counselor or Marriage and Family Therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists;

(h) Clinical Social Worker licensed by the Oregon Board of Licensed Social Workers;

(i) Psychologist licensed by the Oregon Board of Psychology;

(j) Acupuncturist licensed by the Oregon Medical Board;

(k) Non-paid providers must be employed by a provider organization licensed or certified by AMH and meet one of the following qualifications for the scope of service provided:

(A) Qualified mental health professional;

(B) Qualified mental health associate;

(C) Mental health intern;

(D) Peer-support specialist.

(L) SUD counselor certified by a national or state accrediting body, including Certified Alcohol and Drug Counselor (CADC) certificate issued by the Addictions Counselor Certification Board of Oregon (ACCBO) including:

(A) CADC I — Requires education, supervised experience hours, and successful completion of a written examination; 150 hours of SUD education provided by an accredited or approved body; 1,000 hours of supervised experience; completion of the NCAC I professional psychometric national certification examination from the National Association of Alcohol and Drug Abuse Counselors;

(B) CADC II — A minimum of a BA or BS degree with a minimum of 300 hours of SUD education provided by an accredited or approved body; 4,000 hours of supervised experience; completion of the NCAC II professional psychometric national certification examination from the National Association of Alcohol and Drug Abuse Counselors;

(C) CADC III — A Minimum of a Master's degree with a minimum of 300 hours of SUD education provided by an accredited or approved body; 6,000 hours of supervised experience; completion of the NCAC II professional psychometric national certification examination from the National Association of Alcohol and Drug Abuse Counselors.

(3) Treatment staff holding certification in addiction counseling, qualification for the certification must include at least: 750 hours of supervised experience in substance use counseling; 150 contact hours of education and training in substance use related subjects; and successful completion of a written objective examination or portfolio review by the certifying body.

(4) For treatment staff holding a health license described in this rule, the provider must possess documentation of at least 60 (120 for supervi-

sors) contact hours of academic or continuing professional education in SUD treatment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0680
Residential Treatment Services for Children

Paid providers of children's psychiatric residential treatment services shall:

(1) Hold a Certificate of Approval Pursuant to OAR 309-012-0130 through 309-012-0220 from AMH; and

(2) Be accredited as a psychiatric residential treatment facility for children under age 18 by JCAHO, CARF, or any other accrediting organization with comparable standards that is recognized by the State of Oregon;

(3) Be licensed by the Office of Licensing and Regulatory Oversight (OLRO);

(4) Provide a program consistent with standards set by JCAHO, CARF, or any other accrediting organization with comparable standards that is recognized by the state.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0690
Admission Procedure for Residential Treatment Services for Children

(1) Admission procedures for children eligible for Medicaid shall be reviewed through an independent psychiatric review process established by the Division to certify the need for services.

(2) The referring source or the facility shall make available for the Certificate of Need (CONS) process the following information about the referred child:

(a) A written psychological or psychiatric evaluation completed within the previous 60 days;

(b) A written psychosocial history following the format required by the admission procedure of the facility to which the child has been referred;

(c) Results of any direct recipient observation and assessment subsequent to the referral;

(d) Other information from the referral source, other involved community agencies, and the family that are pertinent and appropriate to the admission procedure;

(e) Level of Need Determination Process outcome and Child and Adolescent Service intensity instrument (CASII) score;

(f) Identified care coordinator;

(g) Identified Intensive Community-Based Treatment Services (ICTS) provider;

(h) Identified child and family team members;

(i) Service Coordination Plan or expected date of completion;

(j) Documentation regarding attempt or failure at lower level of care placement;

(k) Letter from Community Mental Health Partner (CMHP) approving the referral to this level of care;

(l) Documentation that private insurance benefit will not fund stay.

(3) The Division shall authorize payment for psychiatric residential treatment services for children upon the approval of a certificate of need by the Division or designee.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0700
1915(i) Home and Community-Based Services

(1) Habilitation services are designed to help an individual attain or maintain their maximal level of independence, including the individual's acceptance of a current residence and the prevention of unnecessary changes in residence. Services are provided in order to assist an individual to acquire, retain, or improve skills in one or more of the following areas: assistance with activities of daily living, cooking, home maintenance, community inclusion and mobility, money management, shopping, community survival skills, communication, self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(2) Psychosocial rehabilitation services are medical or remedial services recommended by a physician or other practitioner to reduce impairment to an individual's functioning associated with the symptoms of a mental disorder or to restore functioning to the highest degree possible.

(3) Paid providers of 1915(i) services shall meet one of the following qualifications:

(a) Residential treatment home or facility licensed pursuant to OAR chapter 309, division 035;

(b) Adult Foster Home licensed pursuant to OAR chapter 309, division 040;

(c) Certificate issued by AMH pursuant to OAR chapter 309, division 012;

(4) Non-paid providers must be employed or subcontracted with a provider licensed or certified by AMH and meet one of the following qualifications: Non-paid providers including:

(a) Qualified Mental Health Professional;

(b) Qualified Mental Health Associate;

(c) Mental Health Intern;

(d) Peer-Support Specialist;

(e) Recovery Assistant.

(5) Providers of 1915(i) services may be required to meet Community Mental Health Program (CMHP) liability insurance requirements.

(6) Due to federal requirements for the Authority to ensure the impartiality of paid providers rendering services to 1915(i) eligible members, providers may be restricted from conducting eligibility reviews or developing the behavioral health assessment or service plan.

(7) To be eligible for services under the 1915(i) State Plan HCBS, the individual must meet the following requirements:

(a) Been diagnosed with a chronic mental illness as defined in ORS 426.495;

(b) Been assessed as needing assistance to perform at least two personal care services as identified in these rules due to a chronic mental illness.

(8) Eligibility for 1915(i) services is determined by an external Quality Improvement Organization (QIO) as identified by the Division.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0710
Residential Personal Care

(1) Personal care services provided to a resident of an AMH licensed residential treatment program include a range of assistance as developmentally appropriate and are provided to individuals with behavioral health conditions that enable them to accomplish tasks that they would normally do for themselves if they did not have a behavioral health condition. Assistance may be in the form of hands-on assistance (actually performing a personal care task) or cueing (redirecting) so that the individual performs the task by him or herself.

(2) Personal care assistance most often relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.

(3) Personal care services may be provided on a continuing basis or on episodic occasions.

(4) Paid providers of facility-based personal care services must meet one of the following:

(a) Licensed residential facility pursuant to OAR chapter 309, divisions 35 and 40;

(b) Secure Residential Treatment Facility (SRTF);

(c) Residential Treatment Facility (RTF);

(d) Residential Treatment Home (RTH);

(e) Adult Foster Home (AFH).

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0720
Prior Authorization and Re-Authorization for Residential Treatment

(1) The Authority does not consider a request for a fixed episode of care or standardized length of stay to be medically appropriate. Requested length of stay must be based on an assessment of individual need and the medical appropriateness of the proposed time for treatment.

(2) Residential treatment is intended as an outcome-based, transitional, and episodic period of care to provide service and supports in a structured environment that will allow the individual to successfully reintegrate into an independent community-based living arrangement.

(3) Residential treatment is not intended to be used as a long-term substitute for lack of available supportive living environment in the community.

(4) Authority licensed residential treatment programs are reimbursed for the provision of rehabilitation, substance use disorder, habilitation, or personal care services as defined in these rules.

(5) The Division shall authorize admission and continued stay in residential programs based on the medical appropriateness of the request and supporting clinical documentation.

(6) Prior authorization requests for admission and continued stay may be reviewed to determine:

(a) The medical appropriateness of the admission for residential services provided;

(b) The appropriateness of the recommended length of stay;

(c) The appropriateness of the recommended plan of care;

(d) The appropriateness of the licensed setting selected for service delivery;

(e) A level of care determination was appropriately documented.

(7) If the Division determines that a residential service prior authorization request is not within coverage parameters, the provider shall be notified in writing and shall have ten business days to provide additional written documentation to support the medical necessity of the admission and procedures.

(8) If the reconsidered decision is to uphold the denial, prior authorization shall be denied.

(9) The provider may appeal any final decision through the Division administrative appeals process as described in OAR 410-120-1560 through 410-120-1875.

(10) Upon denial of a prior authorization request for continued stay, the Division shall authorize payment for up to 60 days of continued stay for the purposes of supporting transition management and planning for the recipient.

(11) The Division shall determine re-authorization and authorization of continued stay based upon one of the following: The recipient continues to meet all basic elements of medical necessity and one of the following criteria must be met:

(a) Documentation that the treatment provided is resulting in measurable clinical outcomes but that the recipient is not sufficiently stabilized or yet developed the skills necessary to support transition to a less restrictive level of care;

(b) The recipient has developed new or worsening symptoms or behaviors that require continued stay in the current level of care;

(c) Requests for continued stay based on these criteria must include documentation of ongoing re-assessment and necessary modification to the current plan of care.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0730
Payment Limitations for Behavioral Health Services

(1) Services shall be subject to periodic utilization review to determine medical appropriateness.

(2) If a review reveals that a recipient received less than active treatment, payment shall not be allowed under these rules, and prior authorization may be cancelled.

(3) The Division shall make no payment for services if the Division or designee has determined the service is not medically appropriate.

(4) Residential treatment services are provided to Medicaid Title XIX eligible individuals in facilities with 16 or fewer beds. Payment is excluded for individuals in "institutions of mental diseases (IMD)" who are over age 18 and under age 65. IMDs are defined in 42 CFR 435.1010.

(5) For residential facilities, the Division may not pay for planned or unplanned absences unless the provider can document clinical services were rendered during the temporary absence.

(6) For residential facilities, the Division shall pay for the day of admission but may not pay for the day of transfer or discharge.

(7) Medicaid may not reimburse costs associated with room and board for recipients residing in Authority licensed residential treatment programs.

(8) Consistent with 42 CFR 447.40, payment for a reserved bed is not covered under Medicaid.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0740
Supported Employment

(1) To be eligible for Medicaid reimbursement, supported employment (SE) services must be provided by a qualified SE provider.

(2) To become a qualified SE provider, an agency must provide the evidence-based practice of individual placement support (IPS) and SE and submit a copy to AMH of a fidelity review conducted by an AMH approved fidelity reviewer that resulted in a score of 100 or better.

(3) Providers implementing IPS supported employment may become a provisionally-qualified SE provider by submitting a request to AMH with a letter of support that indicates receipt of technical assistance and training from an AMH approved IPS SE trainer. Medicaid reimbursement to a provisionally-qualified SE provider ends after 12 months. This option is intended only for providers initiating SE services.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0750
Assertive Community Treatment (ACT)

(1) To be eligible for Medicaid reimbursement, Assertive Community Treatment (ACT) services must be provided by a qualified ACT provider.

(2) To become a qualified ACT provider, an agency must provide the evidence-based practice of ACT and submit to AMH a copy of a fidelity review conducted by an AMH approved ACT Fidelity Reviewer with a minimum score of 114.

(3) Agencies may become a provisionally-qualified ACT provider by submitting to AMH a request with a letter of support that indicates receipt of technical assistance and training from an AMH approved ACT trainer. Provisional ability to receive Medicaid reimbursement shall end after 12 months. This option is intended only for providers initiating ACT services.

(4) If a Qualified ACT provider does not receive a minimum score of 114 on a fidelity review, the following shall occur:

(a) Technical assistance shall be made available for a period of 90 days to address problem areas identified in the fidelity review;

(b) At the end of the 90-day period, a follow-up review shall be conducted by an AMH approved reviewer.

(5) The provider shall forward a copy of the amended fidelity review report to AMH.

(6) If the 90-day review results in a score of less than 114, the agency's designation as a Qualified ACT provider may be suspended for up to one calendar year.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0760
Applied Behavior Analysis

(1) ABA services must be recommended by a licensed physician or licensed psychologist who has experience or training in the diagnosis of autism spectrum disorder and holds at least one of the following educational degrees and valid licensure:

(a) Physician licensed to practice in the State of Oregon;

(b) Psychologist licensed to practice in the State of Oregon.

(2) Paid providers of ABA services must hold the following license or registration:

(a) Licensed Behavior Analyst as described in OAR 824-030-0010;

(b) Licensed health care professional who is registered with the Oregon Behavior Analyst Certification Board as described in OAR 824-030-0030.

(3) Non-paid providers of ABA services must hold the following license or registration:

(a) Assistant Behavior Analyst licensed by the Oregon Behavior Analysis Regulatory Board as described in OAR 824-030-0020;

(b) Behavior Analysis Interventionists registered by the Oregon Behavior Analysis Regulatory Board as described in OAR 824-030-0040.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0770
Individual Eligibility for Applied Behavioral Analysis Treatment

(1) Individuals receiving ABA must have an evaluation by a physician or psychologist experienced in the diagnosis and treatment of autism using the current DSM criteria that includes:

(a) A Diagnosis of an Autism spectrum disorder;

(b) Documentation of and results from a standardized tool that has been used to substantiate the autism disorder or questionnaires that have been used to substantiate a diagnosis of self-injurious behavior;

(c) Documented behaviors that are considered to have an adverse impact on the individual's development or communication or the individual demonstrates behavior that is injurious to themselves or others that:

(A) Interferes with everyday functions or activities;

(B) Less intensive treatment or other therapy has been considered or found insufficient.

(d) Any other documentation that would substantiate the diagnosis of autism or self-injurious behavior such as:

(A) Notes from well-child visits or other medical professionals;

(B) Copy of existing or past Individual Education Plans (IEP);

(C) Results from any additional assessments, such as IQ tests, speech and language tests, or tests of auditory function.

(e) A prescription for ABA treatment that includes:

(A) A diagnosis of autism or self-injurious behavior;

(B) A copy of the evaluation described above;

(C) An order for ABA treatment without specifying hours or intensity.

(2) Recipients ages one through twelve are eligible for intensive and less intensive interventions:

(a) Intensive interventions include therapies that address multiple behaviors at once, are more comprehensive in nature, and start at an earlier age;

(b) Less intensive interventions focus on a few targeted behaviors and generally are used with older children.

(3) Recipients age 13 and older are eligible for less intensive services only.

(4) Intensive and less intensive interventions are based on medical appropriateness as defined in these rules.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0780
Behavioral Health Personal Care Attendant Program

(1) Behavioral health personal care attendant services are essential services that enable an individual to move into or remain in his or her own home. Behavioral health personal care attendant services are provided in accordance with an individual's authorized plan for services by a QMHA or QMHP:

(a) Behavioral health personal care attendant services are provided directly to an eligible individual and are not meant to provide respite or other services to an individual's natural support system. Behavioral health personal care attendant services may not be implemented for the purpose of benefiting an individual's family members or the individual's household in general;

(b) Behavioral health personal care attendant services are limited to 20 hours per month per eligible individual;

(c) To meet an extraordinary personal care need, an individual, representative, or legal representative may request an exception to the 20-hour per month limitation. An exception must be requested through the local community mental health program or agency contracted with AMH serving the individual. The Division has up to 45 days upon receipt of an exception request to determine whether an individual's assessed personal care needs warrant exceeding the 20-hour per month limitation.

(2) Personal care services include:

(a) Basic personal hygiene — providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(b) Toileting, bowel, or bladder care — assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, and bowel care;

(c) Mobility, transfers, or repositioning — assisting an individual with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, and encouraging or assisting with range-of-motion exercises;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(e) Medication or oxygen management — assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;

(f) Delegated nursing tasks as defined in OAR 411-034-0010.

(3) When any of the services listed in section (2) of this rule are essential to the health, safety, and welfare of an individual and the individual is receiving personal care paid by the Division, the following support services may also be provided:

(a) Housekeeping tasks necessary to maintain the individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the individual's needs may be considered in housekeeping;

(b) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services (described in OAR chapter 410, division 136) and assistance with mobility and transfers or cognition in getting to and from appointments or to an office within a medical clinic or center;

(c) Observing the individual's health status and reporting any significant changes to physicians, health care professionals, or other appropriate persons;

(d) First aid and handling of emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another individual, and responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(e) Cognitive assistance or emotional support provided to an individual by another person due to confusion, dementia, behavioral symptoms, or mental or emotional disorders. Cognitive assistance or emotional support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(4) Payment may not be made for any of the following excluded services:

(a) Shopping;

(b) Community transportation;

(c) Money management;

(d) Mileage reimbursement;

(e) Social companionship;

(f) Day care, adult day services (described in OAR chapter 411, division 066), respite, or baby-sitting services;

(g) Medicaid home delivered meals (described in OAR chapter 411, division 040);

(h) Care, grooming, or feeding of pets or other animals; or

(i) Yard work, gardening, or home repair.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0790
Eligibility for Behavioral Health Personal Care Attendant Services

(1) To be eligible for Behavioral Health personal care attendant services, an individual must:

(a) Demonstrate the need for assistance from a qualified provider due to a disabling behavioral health condition with personal care services and meet the eligibility criteria described in this rule;

(b) Be a current recipient of a Medicaid OHP full benefit package.

(2) An individual is not eligible to receive Behavioral Health personal care attendant services if:

(a) The individual is receiving personal care services from a licensed 24-hour residential services program (such as an adult foster home, residential treatment home, or residential treatment facility);

(b) The individual is in a prison, hospital, sub-acute care facility, nursing facility, or other medical institution;

(c) The individual's assessed service needs are being met under other Medicaid-funded home and community-based service options of the individual's choosing.

(3) Behavioral health personal care attendant services are not intended to replace routine care commonly needed by an infant or child typically provided by the infant's or child's parent.

(4) Behavioral health personal care attendant services may not be used to replace other non-Medicaid governmental services.

(5) The Authority may close the eligibility and authorization for Behavioral Health personal care attendant services if an individual fails to:

(a) Employ a provider that meets the requirements in this rule;

(b) Receive personal care from a qualified provider paid by the Authority for 30 continuous calendar days or longer.

(6) Behavioral health personal care attendant services may not duplicate other Medicaid services.

(7) Individuals eligible for Behavioral Health personal care attendant services as described must apply through the local community mental health program or agency contracted with AMH.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0800
Personal Care Attendant Employer-Employee Relationship

(1) The relationship between a provider and an eligible individual or the individual's representative is that of employee and employer.

(2) As an employer, the individual must create and maintain a job description for a potential provider that is in coordination with the individual's plan for services.

(3) The only benefits available to homecare and personal support attendants are those negotiated in a collective bargaining agreement and as provided in statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare and personal support workers are not state or Division employees.

(4) To be eligible for Behavioral Health personal care attendant services, the individual or the individual's representative must demonstrate the ability to:

(a) Locate, screen, and hire a provider meeting the requirements described in this rule;

(b) Supervise and train a provider;

(c) Schedule work, leave, and coverage;

(d) Track the hours worked and verify the authorized hours completed by a provider;

(e) Recognize, discuss, and attempt to correct any performance deficiencies with the provider and provide appropriate, progressive, disciplinary action as needed; and

(f) Discharge an unsatisfactory provider.

(5) The Authority shall pay for Behavioral Health personal care attendant services to the provider on an individual's behalf. Payment for services is not guaranteed until the Authority has verified that an individual's provider meets the qualifications set forth in this rule.

(6) In order to receive Behavioral Health personal care attendant services from a personal support worker or homecare worker, an individual must be able to meet or designate a representative to meet the employer responsibilities in section (4) of this rule.

(7) Termination and the grounds for termination of employment are determined by an individual or the individual's representative. An individual may terminate an employment relationship with a provider at any time and for any reason. An individual must establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal, notice of resignation, work scheduling, and absence reporting.

(8) After appropriate intervention, an individual unable to meet the employer responsibilities in section (4) of this rule may be determined ineligible for Behavioral Health personal care attendant services.

(9) An individual determined ineligible for Behavioral Health personal care attendant services may request these services at the individual's next annual re-assessment. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4) of this rule. The waiting period may be shortened if an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the individual's next annual re-assessment.

(10) An individual may designate a representative to act on the individual's behalf to meet the employer responsibilities in section (4) of this rule. An individual's legal representative may be designated as the individual's representative:

(a) The Authority may deny an individual's designation of a representative if the representative has:

(A) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45;

(B) A history of founded abuse of a child as described in ORS 419 B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities, including previous termination for failure to meet the employer responsibilities in section (4) of this rule.

(b) An individual may select another representative if the Authority suspends, terminates, or denies an individual's designation of a representative.

(11) An individual with a guardian must have a representative for service planning purposes. A guardian may designate themselves the individual's representative.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0810
Personal Care Attendant Qualifications

(1) A qualified provider is an individual who, in the Authority's judgment, demonstrates by background, skills, and abilities knowledge and ability to perform or to learn to perform the required work. A qualified provider must:

(a) Maintain a drug-free work place;

(b) Complete the background check process described in OAR 943, division 007 with an outcome of approved or approved with restrictions;

(c) May not be an individual's legal representative;

(d) Be authorized to work in the United States in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules;

(e) Be 18 years of age or older.

(2) A qualified provider may be employed through a contracted in-home care agency or enrolled as a homecare worker or personal support worker under a provider number. The Authority shall establish the rates for services.

(3) Providers that provide Behavioral Health personal care attendant services must:

(a) Be enrolled in the Consumer-Employed Provider Program and meet all of the standards in OAR chapter 411, division 31;

(b) Meet the provider enrollment and termination criteria described in OAR 411-031-0040 for personal support workers.

(4) The Authority shall conduct background rechecks at least every other year from the date a provider is enrolled. The Authority may conduct a recheck more frequently based on additional information discovered about a provider, such as possible criminal activity or other allegations.

(5) Prior background check approval for another Authority provider type is inadequate to meet background check requirements for homecare or personal support workers.

(6) Provider enrollment may be inactivated when a provider fails to comply with the background recheck process. Once a provider's enrollment is inactivated, the provider must reapply and meet the requirements described in these rules to reactivate provider enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0820
Provider Termination

(1) The Authority may deny or terminate a personal care attendant's provider enrollment and provider number as described in OAR 411-031-0050. The termination, administrative review, and hearings rights for homecare workers are set forth in OAR 411-031-0050.

(2) The Authority may deny or terminate a personal support worker's provider enrollment and provider number when the personal support worker:

(a) Has been appointed the legal guardian of an individual;

(b) Has a background check that results in a closed case pursuant to OAR chapter 943, division 007;

(c) Lacks the skills, knowledge, or ability to perform or learn to perform the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45;

(e) Commits fiscal improprieties;

(f) Fails to provide the authorized services required by an eligible individual;

(g) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by an individual;

(h) Has been intoxicated by alcohol or drugs while providing authorized services to an individual or while in the individual's home;

(i) Has manufactured or distributed drugs while providing authorized services to an individual or while in the individual's home; or

(j) Has been excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General from participation in Medicaid, Medicare, or any other federal health care programs.

(3) A personal support worker may contest the Authority's decision to terminate the personal support worker's provider enrollment and provider number:

(a) A designated employee from the Authority shall review the termination and notify the personal support worker of the decision;

(b) A personal support worker may file a request for a hearing with the Authority's local office if all levels of administrative review have been exhausted and the provider continues to dispute the Authority's decision. The local office shall file the request for a hearing with the Office of Administrative Hearings as described in OAR chapter 137, division 3. The request for a hearing must be filed within 30 calendar days of the date of the written notice from the Authority;

(c) When a contested case is referred to the Office of Administrative Hearings, the referral must indicate whether the Authority is authorizing a proposed order, a proposed and final order, or a final order.

(d) No additional hearing rights have been granted to a personal support worker by this rule other than the right to a hearing on the Authority's decision to terminate provider enrollment.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0830
Personal care attendant Service Assessment, Authorization, and Monitoring

(1) A behavioral health case manager must meet in person with an individual to assess the individual's ability to perform the personal care tasks listed in this rule.:

(a) An individual's natural supports may participate in the assessment if requested by the individual;

(b) A behavioral health case manager must assess an individual's service needs, identify the resources meeting any, some, or all of the individual's needs, and determine if the individual is eligible for behavioral health personal care attendant services or other services;

(c) A behavioral health case manager must meet with an individual in person at least once every 365 days to review the individual's service needs.

(2) A behavioral health case manager must prepare a service plan identifying the tasks for which an individual requires assistance and the monthly number of authorized service hours. The case manager must document an individual's natural supports that currently meet some or all of the individual's assistance needs:

(a) The service plan must describe the tasks to be performed by a qualified provider and must authorize the maximum monthly hours that may be reimbursed for those services;

(b) When developing service plans, a case manager must consider the cost effectiveness of services that adequately meet the individual's service needs;

(c) Payment for behavioral health personal care attendant services must be prior authorized by a behavioral health case manager and based on the service needs of an individual as documented in the individual's written service plan.

(3) When there is an indication that an individual's personal care needs have changed, a case manager must conduct an in-person reassessment with the individual and any of the individual's natural supports if requested by the individual:

(a) Following annual reassessments and those conducted after a change in an individual's personal care needs, a case manager must review service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are meeting the individual's identified service needs;

(b) The case manager may adjust the hours or services in the individual's service plan and must authorize a new service plan, if appropriate, based on the individual's current service needs.

(4) A behavioral health case manager must provide ongoing coordination of behavioral health personal care attendant services, including authorizing changes in providers and service hours, addressing risks, and monitoring and providing information and referral to an individual when indicated.

(5) The Authority may not authorize services within an eligible individual's home when:

(a) The individual's home has dangerous conditions that jeopardize the health or safety of the individual or the provider and necessary safeguards cannot be taken to improve the setting;

(b) The services cannot be provided safely or adequately by a provider;

(c) The individual does not have the ability to make an informed decision, does not have a designated representative to make decisions on his or her behalf, and necessary safeguards cannot be provided to protect the individual's safety, health, and welfare.

(6) A behavioral health case manager must present an individual or the individual's representative with information on service alternatives and provide assistance to assess other choices when a provider or service setting selected by the individual or the individual's representative is not authorized.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0840
Personal Care Attendant Payment Limitations

(1) The number of behavioral health personal care attendant service hours authorized for an individual per calendar month is based on projected amounts of time to perform specific personal care and supportive services to the eligible individual. The total of these hours are limited to 20 hours per individual per month. Individuals whose assessed service needs exceed the 20-hour limit may receive approval for additional hours.

(2) The Authority shall pay for behavioral health personal care attendant services when all acceptable provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Authority is authorized.

(3) In accordance with OAR 410-120-1300, all provider claims for payment must be submitted within 12 months of the date of service.

(4) Payment may not be claimed by a provider until the hours authorized for the payment period have been completed, as directed by an eligible individual or the individual's representative.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

410-172-0850
Telemedicine for Behavioral Health

(1) Telemedicine encompasses different types of programs, services, and delivery mechanisms for medically appropriate covered services within the recipient's benefit package:

(a) Patient consultations using telephone and online or electronic mail (e-mail) are covered when billed services comply with the practice guidelines set forth by the Health Service Commission (HSC) and the applicable HSC-approved code requirements, delivered consistent with the HSC practice guideline;

(b) Patient consultations using videoconferencing, a synchronous (live two-way interactive) video transmission resulting in real time communication between a provider located in a distant site and the recipient being evaluated and located in an originating site, is covered when billed services comply with the billing requirements stated below.

(2) Behavioral health services specifically identified as allowable for telephonic delivery are listed on the Behavioral Health Fee schedule published by the Authority.

(3) Unless expressly authorized in OAR 410-120-1200 (Exclusions), other types of telecommunications are not covered such as images transmitted via facsimile machines and electronic mail when:

(a) Those methods are not being used in lieu of videoconferencing, due to limited videoconferencing equipment access; or

(b) Those methods and specific services are not specifically allowed pursuant to the Health Evidence Review Commission's (HERC) Prioritized List of Health Services and Practice Guideline.

(4) Providers billing for covered telemedicine services must:

(a) Comply with HIPAA and the Authority's Confidentiality and Privacy Rules and security protections for the patient in connection with the telemedicine communication and related records;

(b) Obtain and maintain technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules set forth in OAR 943, division 14;

(c) Ensure policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized individuals;

(d) Comply with the relevant HERC practice guideline for telephone and e-mail consultation. Refer to the current prioritized list and practice guidelines at http://www.oregon.gov/oha/herc/Pages/PrioritizedList.aspx;

(e) Maintain clinical and financial documentation related to telemedicine services as required in OAR 410-120-1360.

Stat. Auth.: ORS 413.042 & 430.640
Stats. Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705 & 430.715
Hist.: DMAP 85-2014(Temp), f. 12-24-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Add contract dispute process for existing Coordinated Care Organizations and Health Care Entities
Adm. Order No.: DMAP 86-2014(Temp)
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Adopted: 410-141-3269
Subject: Incorporate a process for resolving contract disputes between health care entities and existing Coordinated Care Organizations in accordance with ORS 414.635
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3269
Process for Resolving Contract Disputes Between Health Care Entities and Coordinated Care Organizations

(1) Pursuant to ORS 414.635, Coordinated Care Organizations (CCOs) and Health Care Entities (HCE) shall participate in good faith contract negotiations. This rule covers the termination, extension, or renewal of an HCE's contract with a CCO.

(2) In the event of a dispute involving the termination, extension, or renewal of an HCE's contract with a CCO, the parties may take the following actions in an attempt to reach a good faith resolution:

(a) Both parties shall provide a written offer of terms and conditions to the other party. The parties shall explain the basis for their disagreement with the terms and conditions offered by the other party.

(b) The CCO's and HCE's chief financial officer, chief executive officer, or an individual authorized to make decisions on behalf of the HCE or CCO shall have at least one face-to-face meeting in a good faith effort to resolve the disagreement.

(c) The CCO or HCE may request the Authority to provide technical assistance. The Authority's technical assistance is limited to clarifying the CCO contractual provisions, subcontracting criteria, current reimbursement requirements, access standards and other legal requirements.

(3) If the CCO and HCE cannot reach agreement on contract terms, the parties may engage in mediation. Either the CCO or the HCE may request mediation.

(a) After the parties have agreed to enter into mediation, the parties shall attempt to agree on the selection of the mediator and complete paperwork required to secure the mediator's services. If the parties are unable to agree, each party shall appoint a mediator, and those mediators shall select the final mediator.

(b) To be qualified to propose resolutions for disputes under this rule, the mediator shall:

(A) Be a knowledgeable and experienced mediator;

(B) Be familiar with health care and contracting matters; and

(C) Follow the terms and conditions specified in this rule for the mediation process.

(c) The parties shall pay for all mediation costs, whether a conclusion is reached or not. In consideration of potentially varied financial resources between the parties, which may pose a barrier to the use of this process, the parties may ask the mediator to allocate costs between the parties based on the ability to pay.

(d) Within ten business days of a selection of a mediator, the CCO and HCE shall submit to each other and to the mediator the following:

(A) Contract offer; and

(B) Explanation of their position (i.e. advocacy brief).

(e) Unless an extension is agreed on by all parties, the mediator shall issue a report to the involved parties that will include mediation findings and recommendations no longer than 15 business days from the conclusion of the mediation.

(4) Pursuant to ORS 414.635, if the CCO and HCE cannot reach an agreement on contract terms within ten business days of receipt of the mediator's report, either party may request non-binding arbitration. The requesting party shall notify the other party in writing of the party's intent to refer the matter to arbitration.

(a) After notification that one party initiated arbitration, the parties shall agree on the selection of the arbitrator and complete the paperwork required to secure the arbitrator's services. If the parties are unable to agree, each party shall appoint an arbitrator, and these arbitrators shall select the final arbitrator.

(b) To be qualified to propose resolutions for disputes under this rule, the arbitrator shall:

(A) Be a knowledgeable and experienced arbitrator;

(B) Be familiar with health care provider contracting matters; and

(C) Follow the terms and conditions specified in this rule for the arbitration process.

(c) The parties shall pay for all arbitration costs. In consideration of potentially varied financial resources between the parties, which may pose a barrier to the use of this process, the parties may ask the arbitrator to allocate costs between the parties based on ability to pay.

(d) Within ten business days of a selection of an arbitrator, the CCO and HCE shall submit to each other and to the arbitrator the following:

(A) Final contract offer; and

(B) Explanation of their position (i.e. advocacy brief).

(e) The arbitrator must evaluate the final offers and the advocacy briefs from each party and issue a non-binding determination within 15 business days of the receipt of the parties' submissions.

Stat. Auth.: ORS 414.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 86-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Amend Rule to Clarify Review Process for Items Not Already Identified as Covered by DMAP
Adm. Order No.: DMAP 87-2014
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 410-122-0080
Subject: The Division needs to amend the rule listed above to clarify the review process for items not already identified in rules as covered by DMAP and to meet requirements from the CMS guidance letter to Medicaid states.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-122-0080
Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (Division) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing and registered or listed as a medical device by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended. In the event of delay in FDA approval and registration, the Division shall review purchase options on a case-by-case basis;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of the Division rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line and consistent with treatment guidelines on the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List of Health Services or List) found in OAR 410-141-0520, and not otherwise excluded under OAR 410-141-0500;

(i) Is included in the Oregon Health Plan (OHP) client's benefit package of covered services; and

(j) Is the least costly, medically appropriate item that meets the medical needs of the client.

(2) Conditions for Medicare-Medicaid Services:

(a) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to the Division for payment. If Medicare denies payment based on failure to submit a timely appeal, the Division may reduce any amount the Division determines could have been paid by Medicare;

(b) If Medicare denies payment on appeal, the Division shall apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the OHP.

(3) The Division may not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of the client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the bundled rate in a nursing facility as described in OAR 411-070-0085, or as part of a home and community-based care waiver service, or by any other public, community, or third party resource.

(4) Codes that are identified in these rules or in fee schedules are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request for reimbursement shall document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers shall have documentation on file that supports coverage criteria are met.

(6) Billing records shall demonstrate that the provider has not exceeded any limitations and restrictions in the DMEPOS rules. The Division may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5), and (6) above shall be made available to the Division upon request.

(8) To identify non-covered items at a code level, providers can refer to the Division fee schedule, subject to the limitation that fee schedules and codes do not determine coverage and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitutes a buy-up and is prohibited. Refer to the Division General Rules (chapter 410, division 120) for specific language on buy-ups.

(11) Equipment purchased by the Division for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) The Division may not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) The Division may not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, the Division, or other carrier.

(17) Separate payment may not be made to DMEPOS providers for equipment and medical supplies provided to a client in their home when the cost of such items is already included in the capitated (per diem) rate paid to a facility or organization.

(18) Non-contiguous out-of-state DMEPOS providers may seek Medicaid payment only under the following circumstances:

(a) Medicare/Medicaid clients:

(A) For Medicare covered services and then only Medicaid payment of a client's Medicare cost-sharing expenses for DMEPOS services when all of the following criteria are met:

(i) Client is a qualified Medicare beneficiary (QMB);

(ii) Service is covered by Medicare;

(iii) Medicare has paid on the specific code. Prior authorization is not required;

(B) Services not covered by Medicare:

(i) Only when the service or item is not available in the State of Oregon, and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(ii) Some examples of services not reimbursable to a non-contiguous out-of-state provider are incontinence supplies, grab bars, etc. This list is not all-inclusive;

(iii) Services billed must be covered under the OHP;

(iv) Services provided and billed to the Division shall be in accordance with all applicable Division rules;

(b) Medicaid-only clients:

(A) For a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous borders of Oregon and only when the prescribing practitioner has documented that a delay in service may cause client harm;

(B) For foster care or subsidized adoption children placed out of state;

(C) Only when the service or item is not available in the State of Oregon, and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(D) Services billed must be covered under the OHP;

(E) Services provided and billed to the Division shall be in accordance with all applicable Division rules.

(19) The items listed in Table 122-0080 generally do not meet the requirements under DMEPOS rules for purchase, rent, or repair of equipment or items.

(20) A request for an individual medical review may be made on DMEPOS services or items that are not already identified as covered by the Division. The request shall be submitted by the prescribing practitioner with supporting medical documentation. In no case shall a requested service or item be approved unless it is medically appropriate as defined in OAR 410-120-0000 and 410-141-0000 and meets the requirements of this rule. Requests under this section shall be directed in accordance with 410-122-0040(2).

(21) See General Rules OAR 410-120-1200, Excluded Services and Limitations for more information on general scope of coverage and limitations.

(22) Table 122-0080, Exclusions.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 413.042 & 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 26-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 28-2010(Temp), f. & cert. ef. 10-7-10 thru 3-25-11; DMAP 29-2010(Temp), f. & cert. ef. 10-13-10 thru 3-25-11; DMAP 3-2011, f. 3-23-11, cert. ef. 3-25-11; DMAP 87-2014, f. 12-31-14, cert. ef. 1-1-15

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Rule Caption: Amending PDL May 29, July 31, Sept 23, 2014 DUR/P&T Action

Adm. Order No.: DMAP 88-2014(Temp)

Filed with Sec. of State: 12-31-2014

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 410-121-0030

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

410-121-0030:

Preferred:

Imitrex® — Brand only.

Tobramycin (Bethkis) .

Calcium Acetate.

Anafranil — Brand only.

Escitalopram Oxalate.

Imipramine HCL.

Acamprosate Calcium.
Amiloride HCL.
Naltrexone HCL.
Pulmonary Drug Reorganization removed COPD, Asthma Controllers, Asthma Rescue. (New Drug class names.)
Combination Inhalers.
- Inhaled Anticholinergics.
- Inhaled Corticosteroids.
- Inhaled Long Acting Bronchodilators.
- Miscellaneous Pulmonary Drugs.
- Short Acting Bronchodilators.
Tazarotene (Tazorac®).
Fenofibrate
Memantine HCL (Namenda XR®).
Non-Preferred:
Clomipramine HCL.
Niacin
Tricor™ — Brand only.
Trilipix™ — Brand only.
Golimumab (Simponi®).

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information that makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated January 1, 2015 is incorporated in rule by reference and is found on our website at: www.orpdl.org.

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

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

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-14; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14; DMAP 78-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-14; DMAP 88-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Amending Prior Authorization Guide per DUR/P&T Action Sept 23, Nov 20, 2014 Meeting
Adm. Order No.: DMAP 89-2014(Temp)
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 1-1-15 thru 6-26-15
Notice Publication Date:
Rules Amended: 410-121-0040
Subject: The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0040:
Sofosbuvir (Sovaldi®) — updated criteria.
ADHD (Attention Deficit Hyperactivity Disorder) Safety Edit — updated criteria (replaces CNS Stimulants).
Biologicals for RA, Psoriasis, Crohn's disease — updated criteria (replaces TIMS).
Botulinum Toxins — new criteria.
Growth Hormone — updated criteria.
Hepatitis C General — updated criteria.
Incretin Enhancers — updated criteria.
Incretin Mimetics — updated criteria.
Oral MS drugs — updated criteria.
Palivizumab (Synagis®) — updated criteria.
Peginterferon Beta 1-a — new criteria.
Sodium Glucose C-transporter 2 (SGLT2) — updated criteria.
ADHD Safety Edits — updated criteria.

Analgesics Non-Steroidal — updated criteria.
Antiemetics — updated criteria.
Benzodiazepines — new criteria.
CNS Sedative Non-Benzodiazepines —updated criteria.
LABA ICS Inhalers — updated criteria.
Naltrexone Extended Release Inj. (Vivitrol®) — updated criteria.
Nutritional Supplements (Oral Administration Only) — updated criteria.
Skeletal Muscle Relaxants — updated criteria.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040
Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-For-Service Prior Authorization Approval Criteria (PA Criteria guide) dated January 1, 2015, incorporated in rule by reference and found on our Web page at: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html.

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV, or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 141.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: 414.065, 414.325, 414.334, 414.361, 414.371, 414.353 & 414.354
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAp 75-2014, f. & cert. ef. 12-12-14; DMAP 76-2014(Temp), f. & cert. ef. 12-12-14 thru 6-7-15; DMAP 89-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-26-15

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Oregon Health Authority, Office for Oregon Health Policy and Research
Chapter 409

Rule Caption: Amendments to the Physician Visa Waiver Program
Adm. Order No.: OHP 1-2015
Filed with Sec. of State: 1-15-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 409-035-0020, 409-035-0040
Subject: Amend criteria for providers recommending candidates to the Physician Visa Waiver Program.
Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-035-0020
Health Care Facility Participation Requirements

(1) Federally Qualified Health Centers with a:

(a) HPSA score at or above the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver either through the Authority or through the United State Department of Health and Human Services (see: http://www.globalhealth.gov/global-programs-and-initiatives/exchange-visitor-program);

(b) HPSA score below the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver through the Authority.

(2) If a health care facility is located in a Medically Underserved Area (MUA) or Medically Underserved Population (MUP) that is not a Health Professional Shortage Area (HPSA), or if the request is for a flex option, then the facility must obtain prior approval from the Authority and provide documentation substantiating the area's need for a physician.

(3) In order to qualify for the Oregon Physician Visa Waiver Program the health care facility must:

(a) Identify the nature of the business entity seeking to employ the physician, including but not limited to domestic or foreign professional corporation, domestic or foreign private corporation, LLC, or partnership, and provide a certificate of existence or proof of authorization to do business in Oregon;

(b) Have provided care for a minimum of six months in Oregon, or supply evidence of stability such as HRSA funding, prior to submitting an application;

(c) Currently serve Medicare, Medicaid, and low income uninsured patients that are members of the population of the local HRSA designation. Prior to the start of each program year on October 1, the Authority may set requirements for providers for the coming year for the percentage of physician's patient visits by low-income patients, as well as by those patients covered through Medicaid. The current requirements may be found at http://www.oregon.gov/oha/OHPR/PCO/Pages/J1.aspx

(d) Post a sliding fee schedule in the primary languages of the population being served;

(e) Document attempts to actively recruit an American doctor for at least six months prior to submission of the application;

(f) Execute an employment contract with the physician that includes the following provisions:

(A) Duration of at least three years;

(B) Wages and working conditions comparable to those for a graduate from an American medical school;

(C) A signed U.S. Department of Labor Prevailing Wage Form (ETA-9035);

(D) May not include a non-compete clause or restrictive covenant that prevents or discourages the physician from continuing to practice in any designated area after the term of the contract expires;

(E) Specifies the geographic shortage area within Oregon in which the physician will practice or, if requesting a flex option, the shortage area or areas where prospective patients live;

(F) The physician shall treat all patients regardless of their ability to pay;

(G) The physician shall provide patient care on a full-time basis, a minimum of 40 hours per week;

(4) The health care facility shall submit to the Authority a fee of $2,000 and two original copies of the application packet for each waiver requested.

Stat. Auth.: ORS 413.248
Stats. Implemented: ORS 413.248
Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0020 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11; OHP 3-2013, f. 1-24-13, cert. ef. 2-1-13; OHP 1-2015, f. 1-15-15, cert. ef. 2-1-15

409-035-0040
Application Review Process

(1) The Authority shall review completed health care facility applications that meet all requirements of 409-035-0020. Potential physician participants must meet all requirements set forth in 409-035-0030.

(2) The following factors shall be considered in determining whether to recommend a request for waiver of the foreign country residency requirement:

(a) The type of medicine to be practiced. Eighty percent of the slots allotted for each federal fiscal year are reserved for primary care physicians as defined in OAR 409-035-0010. Applications from community health centers with HPSA scores below 7 and from mental health facilities shall receive priority.

(b) Geographic distribution of physicians. To the extent possible, the Authority shall attempt equitable distribution of waiver requests for eligible areas of the state. The number of physicians already working under waivers or recommended for waivers in a particular geographic area shall be taken into consideration.

(c) Distribution of physicians among employers. The Authority may limit the number of slots to six per employer (as defined by EIN) in a program year.

(d) Facility patient profile. The health care facility's percentage of patient visits which are covered by the state Medicaid program, Medicare, or are low income, uninsured.

(3) The Authority shall return incomplete applications, including application fees. The Authority shall process completed resubmitted applications, including fees, as of the new date of receipt.

(4) The Authority shall review each completed application and notify the applicant of the results within 15 business days.

(5) The Authority shall forward the recommended waiver requests to the Department of State. The Department of State shall forward waiver requests recommended for approval to the United States Citizenship and Immigration Services, which shall determine whether to issue or deny the waiver.

(6) The Authority may re-allocate positions based on a review of current access needs in the state. The Authority may also recommend or decline to recommend a waiver request.

Stat. Auth.: ORS 413.248
Stats. Implemented: ORS 413.248
Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0040 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11; OHP 1-2015, f. 1-15-15, cert. ef. 2-1-15

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Oregon Health Authority, Public Employees' Benefit Board
Chapter 101

Rule Caption: Program change to comply with Affordable Care Act regulations relative to medical coverage opt outs.
Adm. Order No.: PEBB 4-2014
Filed with Sec. of State: 12-31-2014
Certified to be Effective: 12-31-14
Notice Publication Date: 12-1-2014
Rules Amended: 101-020-0015
Subject: Program change to comply with Affordable Care Act regulations relative to medical coverage opt outs.
Rules Coordinator: Cherie Taylor—(503) 378-6296

101-020-0015
Opting Out of Medical Insurance Coverage

(1) An eligible employee opting out of medical coverage may receive cash in lieu of medical insurance coverage. PEBB determines the amount of money available to an employee who opts out of medical coverage. Eligible employees opting out of PEBB medical coverage must have other current medical insurance. Benefit eligible employees may opt out of only PEBB medical coverage.

(2) PEBB can require eligible employees enrolling to opt out of a medical coverage to enroll in other core benefits, such as dental, vision, and employee basic life coverage. The employee is responsible to pay any premium contribution required for the enrolled coverage.

(3) The eligible employee opting out of medical coverage must provide, to their agency, documentation of other current medical coverage. Examples of documentation include, but are not limited to, plan identification cards or an employer's letter of coverage. PEBB eligible employees receiving medical coverage from another PEBB eligible employee may request their agency to verify the other PEBB coverage electronically or contact PEBB for verification.

(4) Agencies will not enroll eligible employees in opt out until completed enrollment forms and proof of other coverage documentation are received. Employees must submit other medical coverage documentation to their agency for the opt out enrollment to become effective. The agency or PEBB will void an employee's opt out election if the documentation is not received within the required time. When an opt out election becomes void, PEBB enrolls a newly benefit eligible employee in the employee only tier of a PEBB medical plan that provides statewide coverage. All other employee plan elections take effect as enrolled.

(a) Employees enrolling in opt out during open enrollment must submit proof of other coverage within five business days following the close date of the open enrollment period. Example: John electronically enrolls in medical opt out during October open enrollment. On November 2, (within five business days of the close of the open enrollment period) John provides his agency with a copy of his medical ID cards from his wife's employer sponsored coverage. John's opt out election will start effective Jan. 1, the start of his new plan year.

(b) Newly eligible employees or employees with qualified mid-year plan changes may only enroll in opt out by submitting the correct enrollment forms and proof of other medical coverage to their agency within the allowable time for the enrollment.

Example: Mary is a newly eligible employee on March 15. On March 25, she submits her completed paper enrollment form electing to opt out of medical to her agency; however, she does not include her documentation of other medical coverage. Mary's agency cannot process her enrollment elections until she submits the required proof of coverage document. If Mary resubmits her enrollment and documentation during March, Mary's elections will be effective on April 1. If Mary submits her documentation in April, by the 15th of the month (30 days from eligibility date), her elections will be effective May 1.

(5) An eligible employee enrolled in, Medicaid, Veterans' Administration Health Benefit Programs, or Student Health Insurance may not choose to opt out of PEBB medical coverage.

(6) A PEBB retiree enrolled in a PEBB retiree or COBRA plan who receives a state premium subsidy (e.g., early retirement premium subsidy) and who returns to active benefit eligible employee status, and chooses to continue coverage under a PEBB retiree or COBRA plan is not eligible to enroll as an active employee in opt out and receive cash in lieu of active employee medical benefits.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061 - 243.302
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 3-2010, f. 9-23-10, cert. ef. 10-1-10; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11; PEBB 4-2014, f. & cert. ef. 12-31-14

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Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: County relinquishment of public health authority
Adm. Order No.: PH 31-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date: 11-1-2014
Rules Adopted: 333-014-0042, 333-014-0080, 333-014-0090, 333-014-0100
Rules Amended: 333-014-0040
Rules Repealed: 333-014-0040(T), 333-014-0042(T), 333-014-0080(T), 333-014-0090(T), 333-014-0100(T)
Subject: The Oregon Health Authority, Public Health Division is permanently adopting and amending rules to clarify: a) the process for counties that choose to relinquish public health authority; b) the remaining responsibilities for counties that relinquish public health authority; and c) the new responsibilities for the state in maintaining basic public health functions in the county.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-014-0040
Purpose

The purpose of these rules is to establish minimum standards and administrative rules to:

(1) Define the organization, operation, and extent of activities required or expected of county and district health departments to carry out their responsibilities in implementing the public health laws of this state, and the rules and regulations of the State Public Health Division.

(2) Assist in the development, improvement, and support of local health departments in their efforts to promote and protect the health of Oregon citizens.

(3) Govern the process if a county or health district makes a decision to relinquish local public health authority and the actions that the Public Health Division must take following a relinquishment of local public health authority.

Stat. Auth.: ORS 431.350
Stats. Implemented: ORS 431.345 & 431.375
Hist.: HB 269, f. 4-19-71, ef. 5-11-71; HD 5-1990, f. & cert. ef. 1-24-90; PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14; PH 31-2014, f. & cert. ef. 12-17-14

333-014-0042
Definitions

As used in OAR chapter 333, division 14:

(1) "Enforcement" means an action taken to compel the requirements of the law.

(2) "Local public health administrator" has the meaning given that term in ORS 431.260.

(3) "Local public health authority" has the meaning given that term in ORS 431.260.

(4) "Public Health Division" means the public health division within the Oregon Health Authority.

(5) "Public health law" has the meaning given that term in ORS 431.260.

Stat. Auth.: ORS 413.042, 431.350
Stats. Implemented: ORS 431.345, 431.380, 431.385
Hist.: Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14; PH 31-2014, f. & cert. ef. 12-17-14

333-014-0080
Relinquishment of Local Public Health Authority

(1) If a county or health district chooses to relinquish its local public health authority under ORS 431.375(2) it must submit a written notice to the Public Health Division that it intends to relinquish its local public health authority, at least 365 days prior to the date of relinquishment. The notice must include an explanation of why the county or health district intends to relinquish public health authority and must include the date of relinquishment. The date of relinquishment must not be less than 365 days from the date of the notice.

(2) Within 30 days of receipt of the notice described in section (1) of this rule the Public Health Division will schedule a public hearing in the affected county or health district to inform the public on the process of relinquishment and solicit input from the community. The Public Health Division shall conduct as many public meetings in the affected county or health district as it deems necessary to obtain public input.

(3) Within 45 days of receipt of the notice described in section (1) of this rule the Public Health Division must attempt to schedule a meeting with the governing body of the county, county board of health or district board of health, as applicable to determine what steps might be taken to reverse or mitigate the county's or health district's proposed action to relinquish public health authority.

(4) A county or health district that has relinquished its public health authority:

(a) Is not eligible for funds under ORS 431.380 or funds that are customarily distributed through an agreement delegating state public health authority to the county or health district; and

(b) May not be delegated any authority under ORS 433.855, 446.425, 448.100, 448.170, and 624.510 because in relinquishing its public health authority it has refused to provide environmental health services under 431.416(2)(d), or is no longer the local public health authority.

(5) On the date of relinquishment the county or health district must return any unexpended funds that were distributed under ORS 431.380, or through any other agreement through which state public health authority was delegated to a county or health district.

(6) A county or health district must continue to comply with any contract or agreement with the Public Health Division that concerns any of the services or activities required by a local public health authority under OAR 333-014-0050(2), including but not limited to the financial assistance agreement for local public health services, until the date of relinquishment. The county or health district must provide notice to the Public Health Division, in accordance with the termination provisions of the contract or agreement, that the contract or agreement is terminated as of the date of relinquishment.

(7) The Public Health Division will reasonably act to take actions necessary to ensure that basic public health services are provided in the affected county or health district in accordance with OAR 333-014-0090. Such actions by the Public Health Division do not:

(a) Relieve the county or health district of its obligations arising during the period of its authority;

(b) Constitute a release or waiver by the Public Health Division with respect to such obligations; or

(c) Relieve the county or health district of obligations it may have under state law notwithstanding the relinquishment of its local public health authority.

(8) A county or health district that relinquishes its local public health authority remains responsible for fulfilling the responsibilities of the county or health district, local public health administrator or local public health department as follows:

(a) Enforce public health laws under ORS 431.150.

(b) Appoint a local public health administrator and health officer under ORS 431.418.

(c) Receive reports of reportable diseases under ORS 433.004.

(d) Investigate reports of reportable diseases, in coordination with the Public Health Division, under ORS 433.006.

(e) Disease control in schools, including but not limited to review of administrative records for required vaccinations and related school exclusions under ORS 433.235 to 433.284 and OAR chapter 333, division 50.

(f) Receive reports of animal bites under ORS 433.345.

(g) Permit mass gatherings under ORS 433.745.

(9) A county or health district that has relinquished its public health authority may, at any time, request that its authority be restored. Such a request must be made to the State Public Health Director in writing and shall include an annual plan, a detailed explanation about how the issues that led to relinquishment have been addressed, and a plan to transition

authority from the Public Health Division to the county or health district. The State Public Health Director shall consider the request and respond, in writing, either granting or denying the request within 90 days of the receipt of the request.

(a) If the request is approved, the Public Health Division shall identify the date that authority shall be transferred back to the county or health district.

(b) If the request is denied the State Public Health Director shall explain the basis for rejecting the request and shall include information about how the county or health district can address its deficiencies.

Stat. Auth.: ORS 413.042 & 431.375
Stats. Implemented: ORS 431.375
Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14; PH 31-2014, f. & cert. ef. 12-17-14

333-014-0090
Public Health Division as Local Public Health Authority

(1) If the local public health authority has relinquished its public health authority the Public Health Division shall perform the services or activities necessary to provide basic local public health services under ORS 431.380 to the extent funds are available, and may contract with a private person or entity; an agency; or another county or health district to perform all or part of the necessary public health services or activities. The services that are considered basic local public health services are those required to fulfill statutory obligations as follows:

(a) Investigation of reportable diseases, disease outbreaks, or epidemics under ORS 433.004;

(b) Isolation and quarantine under ORS 433.121 to 433.142;

(c) Investigation and control of tuberculosis (TB) under ORS 433.332;

(d) Order the destruction of animals with rabies under ORS 433.350;

(e) Indoor Clean Air Act enforcement under ORS 433.875;

(f) Family planning and birth control services under ORS 435.205;

(g) Initiate and conduct discussions of family planning under ORS 435.205;

(h) Women, Infants and Children (WIC) services under ORS 413.500;

(i) Licensure of tourist accommodations, including hostels, picnic parks, recreation parks and organizational camps under ORS 446.310 to 446.350;

(j) Licensure of pools and spas under ORS 448.005 to 448.100;

(k) Restaurant licensure, including commissaries, mobile units, vending machines and bed and breakfasts under ORS 624.310 to 624.430; and

(l) Regulation of public water systems under ORS 448.115 to 448.285

(2) A county or health district shall be financially responsible for the costs incurred by the Public Health Division or its contractor in taking enforcement actions as a result of a county or health district's relinquishment of local public health authority. Enforcement actions include but are not limited to:

(a) Any action taken by the Public Health Division necessary to fulfill a county, health district, local public health administrator or local public health department obligation described in OAR 333-014-0080(8);

(b) Any action taken by the Public Health Division under ORS 431.170;

(c) Isolation or quarantine under ORS 433.121 to 433.142;

(d) Inspections, investigations, and legally required activities under:

(A) ORS 433.004 and 433.006 (control of communicable disease);

(B) ORS 433.267 (immunization of school children); or

(C) ORS 433.235 to 433.284 (disease control in schools).

(e) Court actions to ensure compliance with state public health laws; and

(f) The defense of any Public Health Division action in court.

(3) Notwithstanding section (2) of this rule, a county or health district shall not be financially responsible for an enforcement action as described in section (2) of this rule if the action was commenced by the Public Health Division under its own authority and not as a result of the relinquishment of local authority.

(e) The defense of any agency action in court.

Stat. Author: ORS 413.042, 431.262 & 431.375
Stats. Implemented: ORS 431.170 & 431.375
Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14; PH 31-2014, f. & cert. ef. 12-17-14

333-014-0100
Applicability

(1) OAR 333-014-0080 and 333-014-0090 apply to any county or health district that provides notice of its intent to relinquish its local public health authority or has relinquished its public health authority on or after June 20, 2014.

(2) For purposes of these rules the date of relinquishment is the date the county or health district identifies in its notice as the date it will no longer be the local public health authority.

Stat. Author: ORS 413.042 & 431.375
Stats. Implemented: ORS 431.375
Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14; PH 31-2014, f. & cert. ef. 12-17-14

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Rule Caption: Update Radiation Protection Service's X-ray, tanning and radioactive materials program administrative rules
Adm. Order No.: PH 32-2014
Filed with Sec. of State: 12-22-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Adopted: 333-106-0060
Rules Amended: 333-102-0203, 333-102-0305, 333-106-0005, 333-106-0025, 333-106-0040, 333-106-0045, 333-106-0055, 333-106-0201, 333-106-0205, 333-106-0210, 333-106-0215, 333-106-0220, 333-106-0225, 333-106-0240, 333-106-0245, 333-106-0301, 333-106-0325, 333-106-0601, 333-106-0700, 333-106-0735, 333-106-0750, 333-116-0130, 333-116-0190, 333-119-0010, 333-119-0020, 333-119-0030, 333-119-0040, 333-119-0041, 333-119-0050, 333-119-0060, 333-119-0070, 333-119-0080, 333-119-0090, 333-119-0100, 333-119-0110, 333-119-0120, 333-119-0130, 333-120-0200, 333-120-0670, 333-121-0001, 333-121-0010, 333-121-0020, 333-122-0005
Subject: The Oregon Health Authority, Public Health Division, Center for Health Protection is permanently amending and adopting Oregon Administrative Rules in chapter 333, divisions 102, 106, 116, 119, 120, 121 and 122 pertaining to radiation protection. Final rules in relation to the Radioactive Material Licensing program are to meet compatibility with the Nuclear Regulatory Commission's requirements within 10 CFR. In addition, the final rules relating to the X-ray program outlines X-ray operator requirements, consolidates rules relating to the use of fluoroscopy and revises the breast density notification rule and statement. The Tanning program's rules have been amended to match the Food and Drugs Administration's definitions and requirements relating to a tanning device, with additional rules requiring all clients to have identification checked during the initial visit.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-102-0203
Definitions

The following definitions apply for Radioactive Material Licenses issued pursuant to this division and divisions 105, 113, 115, 117, and 121 of this chapter:

NOTE: Unless otherwise specified in this rule, the licenses described in this rule are limited by conditions of the radioactive materials license issued pursuant to OAR 333-102-0200, and other applicable rules in this chapter.

(1) "Analytical Leak Test" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(a), authorizing possession of environmental samples, sealed source leak-test, contamination wipe and samples for radioanalytical measurements. This license does not authorize collection of samples, or decommissioning or decontamination activities.

(2) "Assets" means anything of material value or usefulness. In the context of a materials license, assets include all existing capital, effects, possessions, and belongings and all probable future economic benefits obtained or controlled by a particular entity.

(3) "Basic License" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing the receipt, possession, use, transfer, and disposal of sources of radiation or radioactive materials incident to gauge service, teletherapy service, medical afterloader service, and other licensed service activities; pre-packaged waste pickup (not packaging), storage of materials prior to license termination, instrument quality control servicing or calibration (excluding activities authorized by 333-103-0010(2)(m)), or other minor activities not otherwise specified in these rules, such as authorization for "systems," as defined in these rules, pursuant to that definition.

(4) "Beneficiating" means subjecting a product to any process that can increase or concentrate any component (including the radioactive materials) to benefit the product.

(5) "Brachytherapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(c) authorizing the use of brachytherapy sources for in vivo application of radiation in accordance with 333-116-0420. Brachytherapy includes radioactive material sealed sources in seeds, needles, plaques, or other localized medical devices, but excludes remote afterloaders.

(6) "Broad Scope A" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(d), authorizing activities in 333-102-0900(1)(a), under the authority of a Radiation Safety Committee.

(7) "Broad Scope B" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(e) authorizing activities described in 333-102-0900(1)(b), under the authority of a Radiation Safety Officer.

(8) "Broad Scope C" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(f) authorizing activities described in 333-102-0900(1)(c), under the authority of an authorized user.

(9) "Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to the regulations in this division that has a reasonable nexus to radiological health and safety.

(10) "Construction" means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this division that are related to radiological safety or security. The term "construction" does not include:

(a) Changes for temporary use of the land for public recreational purposes;

(b) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this division;

(e) Excavation;

(f) Erection of support buildings (for example, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(g) Building of service facilities (for example, paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(h) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) Taking any other action that has no reasonable nexus to radiological health and safety.

(11) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(12) "Decontamination and Decommissioning" means:

(a) A facility specific license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that result in returning a site to its original pre-license condition prior to termination of licensed activities; and

(b) Activities performed pursuant to OAR 333-102-0335 on any portion of a site prior to license termination.

(13) "Diagnosis" means examination, determination, identification, study, or analysis of a medical condition.

(14) "Distribution" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(g), authorizing transfer or distribution (sale) of general or specific license radioactive material to persons granted a general license or issued a specific license, or, in the case of NARM, to persons exempt from the rules in this chapter.

(15) "Exempt Source" means radioactive material, exempt from the rules in this chapter.

(16) "Facility" means location of licensed activities under the direct control of licensee management. If a "facility," as used in this division, includes multiple separate addresses, the Authority may determine how the scope of licensed activities, pursuant to OAR 333-102-0190, 333-102-0300, 333-102-0305, 333-102-0315, 333-102-0320, or 333-102-0325, is authorized.

(17) "Fixed Gauge" means a source-specific license for measuring, gauging, or controlling devices pursuant to OAR 333-103-0010(2)(h). The fixed gauge license also includes X-ray & Hybrid Gauges pursuant to division 115 of this chapter, that contain either an X-ray source or a radioactive sealed source.

(18) "General License" means a granted license, as opposed to an issued license, effective under these rules, to acquire, own, possess, use, or transfer radioactive material or a device that contains radioactive material.

(19) "General License Depleted Uranium" means the general license granted subject to receipt of the registration application pursuant to OAR 333-101-0007, and fee, pursuant to 333-103-0015, for depleted uranium used for shielding or counter weights and issued pursuant to 333-102-0103.

(20) "General License Device" means the general license for in vitro materials granted subject to receipt of the registration application pursuant to OAR 333-101-0007, and fee, pursuant to 333-103-0015, for measuring, gauging.

(21) "General License In Vitro Laboratory" means the general license granted by OAR 333-102-0130, subject to receipt of the registration application pursuant to 333-101-0007, and fee, pursuant to 333-103-0015, for in vitro materials granted a general license by 333-102-0130.

(22) "General License Source Material" means the general license granted for use and possession of source material pursuant to OAR 333-102-0101.

(23) "General License for Certain Devices and Equipment" means the general license granted for use and possession of devices consisting of not more than 500 microcuries of polonium-210 or not more than 50 millicuries of tritium (H-3) per device, pursuant to 10 CFR 31.3.

(24) "General License for Luminous Devices for Aircraft" means the general license granted for use and possession of devices containing not more than ten curies of tritium or not more than 300 millicuries of promethium-147.

(25) "General License for Ownership of Radioactive Material and Limits of Possession" means the general license granted to own material that is not necessarily possessed; conversely, material that is possessed is, by grant of general license, not necessarily owned, pursuant to the general license in OAR 333-102-0120.

(26) "General License for Calibration and Reference Sources" means the general license granted to possess not more than five microcuries (185 kBq) of americium-241, plutonium-238, plutonium-239, or radium-226, pursuant to the general license in OAR 333-102-0125.

(27) "General License for Ice Detection Devices" means the general license granted to possess not more than 50 microcuries (1.85 MBq) of strontium-90, pursuant to the general license in OAR 333-102-0135.

(28) "Generators and Kits" means "Imaging and Localization."

(29) "Healing Arts Specific License" means a specific license authorizing activities in division 116 of this chapter.

(30) "High Doserate Remote Afterloader" means a source-specific license issued pursuant to OAR 333-103-0010(2)(i) authorizing the use of sources in accordance with 333-116-0475, which may be either mobile or stationary, and which deliver a doserate in excess of two Gray (200 rad) per hour at the point or surface where the dose is prescribed. A device may be designated as being high, medium, or pulsed dose remote afterloader or mobile high, medium, or pulsed doserate remote afterloader.

(31) "Hybrid Gauge" means a fixed gauging device that contains both a sealed source and an X-ray source, pursuant to division 115 of this chapter.

(32) "In Vitro Laboratory" means a Healing Arts facility-specific license, under management of a physician or Healing Arts specialist, issued pursuant to OAR 333-103-0010(2)(k) authorizing the use of prepackaged radioactive materials in quantities greater than those authorized by the General License granted by 333-102-0130(2).

(33) Imaging and Localization means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(j) authorizing the use of generators and kits for nuclear medicine imaging and localization in accordance with 333-116-0320 or positron emission tomography studies in accordance with 333-116-0800 through 333-116-0880.

(34) "Industrial Radiography" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(l) authorizing activities in division 105 of this chapter.

(35) "Instrument Calibration" means a source-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(m) for sources of radiation used to calibrate instruments.

(36) "Investigational New Drug" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(n) authorizing the use of any investigational product or device approved by the US Food and Drug Administration (FDA) for human use research, diagnosis, or therapy, in accordance with the rules in this chapter.

(37) "Irradiator-Other" means an irradiator with greater than 10,000 curies (370 TBq) licensed pursuant to OAR 333-103-0010(2)(w) and 333-103-0010(7), designed to produce extremely high dose rates as authorized by division 121 of this chapter.

(38) "Irradiator Self-shielded or Other — Less than 10,000 Curies" means a source-specific license issued pursuant to OAR 333-103-0010(2)(o) authorizing self-shielded irradiators, including blood irradiators, panoramic irradiators, and converted teletherapy units, with less than 10,000 Ci (370 TBq) activity.

(39) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(40) "Lot Tolerance Percent Defective" means, expressed in percent defective, the poorest quality in an individual inspection lot that can be accepted.

(41) "Low Doserate Remote Afterloader Device" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing devices 333-116-0475, which remotely deliver a doserate of less than two Gray (200 rad) per hour at the point or surface where the dose is prescribed.

(42) "Manufacturing or Compounding" means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(p) authorizing manufacture, fabrication, assembly, construction, combining, processing, concentrating, beneficiating, or processing items or products using or containing radioactive materials into a finished product containing radioactive material in accordance with applicable requirements in division 102 of this chapter.

(43) "Manufacturing or Compounding and Distribution" means activities performed as defined in sections (14) and (42) of this rule and require separate specific licenses for each activity.

(44) "Mobile Nuclear Medicine Service" means a facility-specific Healing Arts license issued pursuant to OAR 333-116-0120 authorizing the medical use of radioactive material at specified temporary locations.

(45) "Nationally Tracked Source" means a sealed source containing a quantity equal to or greater than Category 1 or 2 levels of any radioactive material listed in 10 CFR 20 Appendix E.

(46) "Naturally occurring radioactive material (NORM)" means radioactive material in the uranium or thorium decay series existing in nature in concentrations less than 0.05 percent source material.

(47) "Net working capital" means current assets minus current liabilities.

(48) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(49) "Neutron Howitzer" means a device that contains a sealed source containing Special Nuclear Material (see definition in OAR 333-100-0005) that generates neutrons that are used for analytical, teaching, or research purposes.

(50) "Neutron Production" denotes a process in which neutrons are produced, either by natural or artificial means.

(51) "NORM (no processing)" means a facility-specific license pursuant to OAR 333-103-0010(2)(r) authorizing possession, use, and transfer of NORM in accordance with division 117 of this chapter.

NOTE: NORM licenses authorize licensable quantities of radioactive material in the uranium or thorium decay series. Licensable quantities of NORM are derived from disposal limits in OAR chapter 345, division 50. Any material that contains NORM requires a specific license unless exempted in OAR chapter 345, division 50. Zircon sand is used as the NORM model for licensing purposes. Quantities of zircon sand in excess of 20,000 pounds in a year constitute a licensable quantity of NORM. NORM materials that are not zircon are based on the zircon model.

(52) "Nuclear Laundry" means a laundry facility designed specifically to clean or launder clothing contaminated with licensed radioactive materials. Nuclear Laundry facilities must have process and waste management control procedures to prevent reconcentrating of licensed materials in sewers, drains, premises, and the environment. Nuclear Laundry activities are authorized pursuant to OAR 333-103-0010(2)(w), "Radioactive Material Not Otherwise Specified Facility," see 333-102-0203(61).

(53) "Nuclear Pharmacy" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(s) for activities authorized by 333-102-0285 and the Oregon Board of Pharmacy rules, to compound Radiopharmaceutical and distribute (sell or transfer) to persons specifically licensed to receive such compounds or products.

NOTE: Nuclear Pharmacies, pursuant to policy provisions of chapter 345 division 50 may collect syringes containing residual licensed material from spent patient doses, since the syringe is considered to be a transport device under the administrative control of the pharmacy rather than the licensed material transferred as the dose. Residual licensed material may be considered either to be exempt pursuant to Table 1 of division 50 or under the authority of a division license if the receding licensee stores syringes for decay. In either case, the division license specifies which disposal method is being used by the pharmacy and licensee to avoid compatibility conflicts with division 50 requirements.

(54) "Other Measuring Device" means a source-specific license issued pursuant to OAR 333-103-0010(2)(t), authorizing analytical instruments, gas chromatograph electron capture detectors, and other non-portable analytical instruments, including those devices that contain multiple sources but are configured and used as a "system," in accordance with the definition in this rule.

NOTE: General license gas chromatograph detectors that formerly were granted a general license by OAR 333-102-0115, but which required a registration fee pursuant 333-103-0015(2)(b), now are subject to the specific license in 333-103-0010(2)(t).

(55) "Pool-type Irradiator" means an irradiator with greater than 10,000 curies (370 TBq) in which water provides the radiation shielding, authorized in accordance with division 121 of this chapter.

(56) "Portable Gauge" means a source-specific license issued pursuant to OAR 333-103-0010(2)(u) for sources used in devices that can be transported and used at temporary job sites.

NOTE: Any device that meets the definition of "portable gauge" and is transported or used at temporary job sites within the state of Oregon, requires an application for and issuance of an Oregon specific license subject to OAR 333-103-0010(2)(u).

(57) "Positron Emission Tomography" (PET) means a licensed healing arts activity authorized by OAR 333-116-0800 and included in the facility specific license issued pursuant to 333-103-0010(2)(j). PET nuclides, which are NARM, are subject to all Oregon rules.

(58) "Possession or Storage of Industrial Wastes Containing Radioactive Material" means activities subject to division 110 of this chapter for the production or storage of wastes that are exempt from division 50 of chapter 345 facility siting requirements, and were generated under a current NRC, Agreement State, or Licensing State specific radioactive materials license.

(59) "Possession or Storage of Uranium Tailings" means activities incident to uranium processing or milling operations resulting in the production of tailings.

(60) "Principal Activities" means activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(61) "Processing" means chemically or physically changing a licensed material from one physical form to another form or specie (for example, breaking an ore down into its components resulting in "tailings"; milling a raw licensed material and combining to form another product or material. See "Beneficiating"; "Manufacturing or Compounding").

(62) "Radiation Source" means source of radiation (see definition of "Source of radiation" in OAR 333-100-0005).

(63) "Radioactive Material Not Otherwise Specified Facility" means a license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that includes, but are not limited to, complex licensable activities such as facility decontamination and decommissioning, nuclear laundry activities, uranium mill tailings storage, storage of industrial wastes containing radioactive materials, large irradiator management, and other complex activities not otherwise specified in these rules.

(64) "Radioactive Materials License" means the document, pursuant to OAR 333-102-0300, issued after an application, pursuant to 333-102-0190, has been accepted as adequate, that specifies radioactive materials, use authorizations, safety procedures, and use locations.

(65) "Radiopharmaceutical Therapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(v) authorizing the use of Radiopharmaceutical for therapy in accordance with 333-116-0360.

(66) "Remote Afterloader" means a medical device that moves a sealed source to an interstitial (in vivo) location without exposing the practitioner to the radiation dose. Remote afterloader sources may be manipulated using computer software and engineering techniques.

(67) "Research & Development" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(x) authorizing research and development activities, as defined in 333-100-0005, but does not authorize additional specific sources of radiation, which must be licensed separately pursuant to 333-103-0010 and 333-103-0015.

(68) "Responsible Representative" means

(a) The person designated as having responsibility for general license device or general license material;

(b) The person management has selected to certify general license inventory; and

(c) The individual responsible to the Authority and to management to ensure that all regulatory elements are adequate.

(69) "Sealed Source/Device Evaluation" means the review of a licensee's prototype source or device prior to registration by the Nuclear Regulatory Commission in the Sealed Source and Device Catalog.

NOTE: The Authority no longer has authority to review sources or devices. All source or device reviews must be forwarded to the NRC for review. Authority to conduct device or source evaluations was rescinded by the NRC in 1998.

(70) "Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

(71) "Sealed Sources for Diagnosis" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(y) authorizing the use of sealed sources for diagnosis in accordance with 333-116-0400.

(72) "Special Nuclear Material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of section 51 of the act, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched by any of the foregoing but does not include source material.

(73) "Specific License Radioactive Material" means radioactive material that requires authorization in a specific license document pursuant to OAR 333-102-0075(2) where materials must be annotated on the specific license, and validated with a specific license fee pursuant to 333-103-0010(2)(a) through 333-103-0010(2)(hh) (see "Radioactive Materials License").

(74) "System," as used in this division, means multiple separate (individual) sources of radiation (sealed radioactive sources), which together, rather than independently, achieve a desired functionality. Such "system" is subject to one specific license fee or general license registration fee, as the case may be.

(75) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets may not include intangibles such as goodwill and rights to patents or royalties.

(76) "Teletherapy" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(cc) authorizing teletherapy procedures in accordance with OAR 333-116-0480. This license also includes other high dose rate external beam therapy devices such as the "gamma knife."

(77) "Temporary Job Site" means any location, where specific license material is used that is either:

(a) Not the specific location of the licensee if an in-state licensee; or

(b) Any location in the state if an out-of-state specific licensee pursuant to a specific radioactive materials license.

NOTE: Persons authorized for temporary jobsites in Oregon must have a specific license for such activities.

(78) "Therapy" means a process that is meant to be restorative, promotes healing, or is beneficial to a patient in a healing arts context.

(79) "Unique" means a specific license issued pursuant to OAR 333-103-0010(2)(dd) to agencies in the Oregon Health Authority.

(80) "Uptake and Dilution" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ee) authorizing activities in 333-116-0300 for uptake, dilution, and excretion studies.

(81) "Use and Possession of Source Material " means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(z) to possess, use, process, or transfer source material, as defined in OAR 333-100-0005, in quantities greater than general license quantities or in concentrations greater than 0.05 percent source material.

NOTE: This definition was amended to avoid confusion between the definition of "source material" in division 100 of this chapter and the specific license (billable object) in division 103 of this chapter.

(82) "Use of Xenon Gas" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ff) authorizing the use of Xe-133 for diagnosis pursuant to 333-116-0280.

(83) "Waste Packaging" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(gg), authorizing packaging, collection, storage, and transfer of radioactive waste. This specific license does not authorize storage of radioactive wastes, but does authorize temporary job sites.

(84) "Well Logging" means a license issued pursuant to OAR 333-103-0010(2)(hh) authorizing the possession, use, transfer, or disposal of sources of radiation used for well logging activities authorized by division 113 of this chapter.

NOTE: Unless specifically authorized in this rule or in a radioactive materials license that authorizes temporary job sites, specific licenses must be used only at one authorized site.

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

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-102-0305
Specific Terms and Conditions of Licenses

(1) Each license issued pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120, 121 and 124 of this chapter are subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations and orders of the Authority.

(2) No license issued or granted pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter nor any right may be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Authority, after securing full information, shall find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(3) An application for transfer of license must include:

(a) The identity, technical and financial qualification of the proposed transferee; and

(b) Financial assurance for decommissioning as required by OAR 333-102-0200(6)

(4) Each person licensed by the Authority pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter must confine the use and possession of the radioactive material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall carry with it the right to receive, acquire, own, and possess radioactive material. Preparation for shipment and transport of radioactive material must be in accordance with the provisions of division 118 of this chapter.

(5) Each license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall be deemed to contain the provisions set forth in section 183b.-d., inclusive, of the Atomic Energy Act of 1954, as amended, whether or not these provisions are expressly set forth in the license.

(6) The Authority may incorporate, in any license issued pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter, at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material as it deems appropriate or necessary in order to:

(a) Promote the common defense and security;

(b) Protect health or to minimize danger to life or property;

(c) Protect restricted data; and

(d) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

(7) Licensees required to submit emergency plans by OAR 333-102-0190(10) must follow the emergency plan approved by the Authority. The licensee may change the approved plan without Authority approval only if the changes do not decrease the effectiveness of the plan. The licensee must furnish the change to the Authority and to affected offsite response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Authority.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators must test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85, respectively, in accordance with OAR 333-116-0330. The licensee must record the results of each test and retain each record for three years after the record is made.

(9)(a) Each general licensee subject to the registration requirement in OAR 333-101-0007 and each specific licensee must notify the Authority in

writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(b) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) The date of the filing of the petition.

(10) Sealed sources or detector cells containing licensed material must not be opened or sources removed from source holders or detector cells by the licensee.

(11) No licensee may acquire licensed radioactive material in a sealed source or in a device that contains a sealed source unless the source or device has been registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or with an Agreement State.

(12) Any sealed source fabricated by a licensee must be registered, inspected, and tested for construction defects, leakage, and contamination prior to any use or transfer as a sealed source in accordance with requirements in 10 CFR 32.210.

(13) Each licensee must conduct a physical inventory at intervals not to exceed six months to account for all radioactive material received and possessed by licensee. Inventories must include the types and quantities of radioactive material, location of materials, date of receipt, and the date of the inventory; and for sealed sources, the inventory must include the types and quantities of sealed sources, sealed source manufacturer, model number, serial number, date of receipt, condition of sealed sources, and the date of the inventory. Records of the inventories required by this section must be kept until inspection by the Authority.

(14) Each licensee must transport radioactive material or deliver radioactive material to a carrier for transport in accordance with the provisions of Parts 170 through 189 of Title 49, Code of Federal Regulations and in accordance with division 118 of this chapter, "Transportation of Radioactive Material."

(15) Each licensee possessing a device licensed pursuant to OAR 333-103-0010(2)(h) must perform an inspection of all devices at intervals not to exceed six months. Inspections must include condition of labeling and posting of each radiation device, and corrective actions taken if any; condition of shutter operation, if applicable, of each device, and corrective actions taken if any; and location of each device. Records of the inspections required by this section must be kept until inspection by the Authority.

(16) No licensee may open or remove radioactive material from sealed sources or detector cells containing licensed radiation sources.

(17) No person may repair, modify, dismantle, or effect any change in licensed devices or radiation sources, nor modify nor alter labels affixed to licensed devices by the manufacturer

(18) Installation, initial radiation survey, relocation, removal from service, maintenance, and repair of fixed gauging devices containing radioactive sealed sources, and installation, replacement, and disposal of sealed sources must be performed only by persons specifically authorized by the Authority, the U.S. Nuclear Regulatory Commission, or another Agreement state to perform such services. Records of all surveys must be maintained for inspection by the Radiation Protection Services section.

(19) If the licensee has previously determined that monitoring for internal exposure pursuant to OAR 333-120-0130, 333-120-0210, or 333-120-0320 is required, the data and results of this evaluation must be placed in the worker's exposure records and included the worker's Oregon Form Z report.

(20) Testing for leakage or contamination of sealed sources must be in accordance with requirements in OAR 333-120-0460. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, a sealed source or detector cell received from another person must not be put into use until tested.

(21) Detector cells must be used only in conjunction with a properly operating temperature control mechanism that prevents foil temperatures from exceeding manufacturer's specifications. Exhaust from detector cells must be vented to keep exposures to personnel and the public as low as reasonably achievable pursuant to OAR 333-120-0180.

(22) Licensees who possess sealed sources used for testing at field sites must possess at such locations transport documents, a current copy of the specific radioactive materials license, specific license validation certificates, the current leak test certificate, and the licensee's operating and emergency procedures. Licensed materials stored in an unrestricted area must be secured from unauthorized removal from the place of storage in accordance with provisions of OAR 333-120-0250 and 333-120-0260.

(23) Any specific licensee is authorized to receive, possess, use, transfer, and import up to 999 kilograms of uranium contained as shielding for specific licensed radioactive material authorized by license.

(24) A licensee may store, pursuant to OAR 333-120-0500, radioactive waste for decay in storage before disposal in accordance with 333-116-0290.

(25) Licensed materials in an unrestricted area and not in storage must be tended under the constant surveillance and immediate control of the licensee.

(26) Except as otherwise specified in a radioactive materials license, the licensee must have available and follow the instructions contained in the manufacturer's instruction manual for the chromatography device.

(27) In lieu of using the conventional radiation caution colors (magenta or purple on yellow background) as provided in OAR 333-120-0400(2), the licensee is hereby authorized to label detector cells and cell baths, containing licensed radioactive material and used in gas chromatography devices, with conspicuously etched or stamped radiation caution symbols without a color requirement.

(28) If a radiography licensee plans to use, during normal industrial radiographic operations subject to division 105 of this chapter, two or more exposure devices at one jobsite, the licensee must require at least one Radiographer or Radiographer Instructor authorized user for each exposure device, and the total number of authorized personnel (radiographers and assistant radiographers) at the temporary jobsite must not be less than n+1 where n=the number of cameras.

(29) Security requirements for portable devices containing licensed radioactive materials. Each portable device containing licensed radioactive materials must be secured using a minimum of two independent physical controls that form two separate tangible barriers to prevent unauthorized removal or use, whenever the portable device is not under the direct control and constant surveillance of the licensee.

(30) Authorization under OAR 333-102-0190(10)(c)(N) to produce Positron Emission Tomography (PET) radiopharmaceutical drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radiopharmaceutical drugs.

(31) Each licensee authorized under OAR 333-102-0190(10)(c)(N) to produce PET radiopharmaceutical drugs for noncommercial transfer to medical use licensees in its consortium shall:

(a) Satisfy the labeling requirements in OAR 333-102-0285(1)(d) for each PET radiopharmaceutical drug transport radiation shield and each syringe, vial, or other container used to hold a PET radiopharmaceutical drug intended for noncommercial distribution to members of its consortium.

(b) Possess and use instrumentation to measure the radioactivity of the PET radiopharmaceutical drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in OAR 333-102-0285(3).

(32) A licensee that is a pharmacy authorized under OAR 333-102-0190(10)(c)(N) to produce PET radiopharmaceutical drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radiopharmaceutical drugs shall be:

(a) An authorized nuclear pharmacist who meets the requirements in OAR 333-116-0910; or

(b) An individual under the supervision of an authorized nuclear pharmacist as specified in OAR 333-116-0100.

(33) A pharmacy, authorized under OAR 333-102-0190(10)(c)(N) to produce PET radiopharmaceutical drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of 333-116-0910.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0005

Definitions

As used in this division, the following definitions apply:

(1) "Accessible Surface" means the external surface of the enclosure or housing provided by the manufacturer.

(2) "Added Filtration" means any filtration that is in addition to the inherent filtration.

(3) "Aluminum Equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

NOTE: The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(4) "Applications Training" means a vendor or manufacturer providing training for specific X-ray equipment.

(5) "A.R.R.T." means the American Registry of Radiologic Technologists.

(6) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

(7) "Attenuation Block" means a block or stack, having dimensions 20 centimeters (cm) by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(8) "Authority approved instructor" means an individual who has been evaluated and approved by the Authority to teach Radiation Safety.

(9) "Authority approved training course" means a course of training that has been evaluated and approved by the Authority.

(10) "Automatic Exposure Control (AEC)" means a device that automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation. (See also "Photo timer".)

(11) "Barrier" (see "Protective Barrier").

(12) "Beam Axis" means a line from the source through the centers of the X-ray fields.

(13) "Beam-Limiting Device" means a device that provides a means to restrict the dimensions of the X-ray field.

(14) "Beam Monitoring System" means a system designed to detect and measure the radiation present in the useful beam.

(15) "C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(16) "Cephalometric Device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(17) "Certified Components" means components of X-ray systems that are subject to the X-ray Equipment Performance Standards promulgated under Public Law 90-602, the Radiation Control Agency for Health and Safety Act of 1968.

(18) "Certified System" means any X-ray system that has one or more certified component(s).

(19) "Changeable Filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

(20) "Coefficient of Variation (C)" means the ratio of the standard deviation to the mean value of a set of observations.

(21) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(22) "Computed radiography (CR)" means creating an X-ray image using plates consisting of a photo stimulable phosphor (PSP) that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.

(23) "Contact Therapy System" means an X-ray system used for therapy with the tube port placed in contact with or within five centimeters of the surface being treated.

(24) "Control Panel" means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.

(25) "Cooling Curve" means the graphical relationship between heat units stored and cooling time.

(26) "Dead-Man Switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(27) "Detector" (see "Radiation detector").

(28) "Diagnostic X-ray imaging system" means an assemblage of components for the generation, emission, and reception of X-rays and the transformation, storage, and visual display of the resultant X-ray image.

(29) "Diagnostic Source Assembly" means the tube housing assembly with a beam-limiting device attached.

(30) "Diagnostic-Type Protective Tube Housing" means a tube housing so constructed that the leakage radiation measured at a distance of one meter from the source does not exceed 100 milliroentgens (mR) in one hour when the tube is operated at its leakage technique factors.

(31) "Diagnostic X-ray System" means an X-ray system designed for irradiation of any part of the human body or animal body for the purpose of diagnosis or visualization.

(32) "Direct Digital Radiography (DR)"" means creating an X-ray image by sending signals directly from a digital image receptor to a computer for display and manipulation.

(33) "Direct Scattered Radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

(34) "Entrance Exposure Rate" means the exposure free in air per unit of time.

(35) "Field Emission Equipment" means equipment which uses a tube in which electron emission from the cathode is due solely to the action of an electric field.

(36) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(37) "Fluoroscopic Benchmark" means a standard based upon the average cumulative fluoroscopic on-time normally found to be used for a specific fluoroscopic procedure at the site.

(38) "Fluoroscopic Imaging Assembly" means a subsystem in which X-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(39) "Fluoroscopic X-ray equipment operator" means any individual who, adjusts technique factors, activates the exposure switch or button of a fluoroscopic X-ray machine or physically positions patients or animals. Human holders, used solely for immobilization purposes (example being veterinarian human holders) are excluded from this rule.

(40) "Focal Spot" means the area projected on the anode of the tube by the electrons accelerated from the cathode and from which the useful beam originates.

(41) "General Purpose Radiographic X-ray System" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(42) "Gonad Shield" means a protective barrier for the testes or ovaries.

(43) "Half-Value Layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(44) "Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an Oregon licensed practitioner of the healing arts legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment.

(45) "Heat Unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes and seconds, example being kVp x mA x second.

(46) "HVL" (see "Half-value layer").

(47) "Image Intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

(48) "Image Receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident photons either into a visible image or into another form which can be made into a visible image by further transformations.

(49) "Inherent Filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

(50) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(51) "Irradiation" means the exposure of matter to ionizing radiation.

(52) "Kilovolt-Peak" (see "Peak tube potential").

(53) "kV" means kilovolts.

(54) "kVp" (see "Peak tube potential").

(55) "kWs" means kilowatt second.

(56) "Lead Equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(57) "Leakage Radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

(a) The useful beam; and

(b) Radiation produced when the exposure switch or timer is not activated.

(58) "Leakage Technique Factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, example being 10 milliampere seconds (mAs), or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(59) "Light Field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(60) "Line-Voltage Regulation" means the difference between the no-load and the load line potentials expressed as a percent of the load line potential.

(61) "mA" means milliampere.

(62) "mAs" means milliampere second.

(63) "Maximum Line Current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

(64) "Mobile Equipment" (see "X-ray Equipment").

(65) "Non-radiologist practitioner" means an individual who practices medicine as a medical doctor (M.D.), doctor of osteopathic medicine (D.O), doctor of chiropractic medicine (D.C.), doctor of podiatric medicine (D.P.M.) or doctor of veterinary medicine (D.V.M.); and

(a) Are not specifically certified in diagnostic or therapeutic use of X-rays; and

(b) Are currently licensed by their respective Oregon licensing board.

(66) "Operator" means an individual who, under the supervision of a practitioner of the healing arts, handles ionizing radiation equipment, physically positions patients or animals, determines exposure parameters or applies the radiation for the diagnostic or therapeutic purposes intended.

(67) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(68) "Peak Tube Potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

(69) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

(70) "Photo timer" means a method for controlling radiation exposures to image receptors by measuring the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is a part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

(71) "PID" (see "Position indicating device").

(72) "Portable Equipment" (see "X-ray Equipment").

(73) "Position Indicating Device" means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(74) "Primary Dose Monitoring System" means a system which will monitor useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been acquired.

(75) "Primary Protective Barrier" (see "Protective barrier").

(76) "Protective Apron" means an apron made of radiation absorbing materials used to reduce radiation exposure.

(77) "Protected Area" means an area shielded with primary or secondary protective barriers or an area removed from the radiation source such that the exposure rate within the area due to normal operating procedures and workload does not exceed any of the following limits:

(a) 2 milliroentgens (mR) in any one hour; or

(b) 100 mR in any one year.

(c) See OAR 333-120-0180 for additional information.

(78) "Protective Barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure;

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(79) "Protective Glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

(80) "Qualified Expert" means an individual, approved by the Authority, who has demonstrated, pursuant to these rules, that he/she possesses the knowledge, skills, and training to measure ionizing radiation, to evaluate radiation parameters, to evaluate safety techniques, and to advise regarding radiation protection needs. The individual shall:

(a) Be certified in the appropriate field by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics or the American Board of Nuclear Medicine Science; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, health physics, or medical physics and have completed one year of documented, full time training in the appropriate field and also one year of documented, full time work experience under the general supervision of a qualified expert in the appropriate field. To meet this requirement, the individual shall have performed the tasks required of a qualified expert during the year of work experience; or

(c) Receive approval from the Authority for specific activities.

(81) "Quality Control Program" means a program directed at film processing and radiographic image quality whereby periodic monitoring of film processing is performed. Test films are compared against control film, either visually or by use of a densitometer, to determine if density or contrast have changed. Steps can then be taken to investigate such change and correct the problem. The X-ray machine itself can also be involved in the quality control program, as can other components of the imaging chain.

(82) "Radiation Detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(83) "Radiation Therapy Simulation System" means a radiographic or fluoroscopic system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(84) "Radiograph" means an image receptor on which the image is created directly or indirectly by a pattern and results in a permanent record.

(85) "Radiographic Imaging System" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(86) "Radiological Physicist" means an individual who:

(a) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or

(b) Has a bachelor's degree in one of the physical sciences or engineering and three years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the calibration and spot checks of a medical accelerator or a sealed source teletherapy unit; or

(c) Has a master's or a doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one year's full-time training in therapeutic radiological physics; and has had one year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(87) "Radiologist" or "Oral Radiologist" means a physician or dentist trained in the diagnostic or therapeutic use of X-rays and who is;

(a) Currently licensed by their respective Oregon licensing board; and

(b) Board certified by the American Board of Radiology (ABR) or American Osteopathic Board of Radiology (AOBR) or American Chiropractic Board of Radiology (DACBR) or Royal College of Physicians and Surgeons of Canada (RCPSC) or the American Board of Oral and

Maxillo-Facial Radiology (ABOMFR) and currently licensed to practice medicine or dentistry in Oregon.

(88) "Radiology Physician's Assistant" (R.P.A.)/ "Registered Radiology Assistant" (R.R.A.).

(a) An R.P.A. means an American Registry of Radiologic Technologists (A.R.R.T.) technologist who has successfully completed an advanced training program and is certified by the Certification Board for Radiology Practitioner Assistants (CBRPA).

(b) An R.R.A means an A.R.R.T. technologist who has successfully completed an advanced training program and is certified by A.R.R.T.

(89) "R.T." means a radiologic technologist certified in radiography and currently licensed by the Oregon Board of Medical Imaging.

(90) "Rating" means the operating limits as specified by the component manufacturer.

(91) "Recording" means producing a permanent form of an image resulting from X-ray photons.

(92) "Registrant," as used in this division, means any person who owns or possesses and administratively controls an X-ray system which is used to deliberately expose humans, animals or materials to the useful beam of the system and is required by the provisions contained in divisions 100 and 101 of this chapter to register with the Authority.

(93) "Response Time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero, sufficient to provide a steady state midscale reading.

(94) "Scattered Radiation" means radiation that, during passage through matter, has been deviated in direction (see "Direct Scattered Radiation").

(95) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(96) "Secondary Dose Monitoring System" means a system which will terminate irradiation in the event of failure of the primary system.

(97) "Secondary Protective Barrier" (see "Protective barrier").

(98) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(99) "SID" (see "Source-image receptor distance").

(100) "Source" means the focal spot of the X-ray tube.

(101) "Source-Image Receptor Distance" means the distance from the source to the center of the input surface of the image receptor.

(102) "Spot Check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(103) "Spot Film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(104) "Spot-Film Device" means a device intended to transport or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(105) "SSD" means the distance between the source and the skin of the patient.

(106) "Stationary Equipment" (see "X-ray Equipment").

(107) "Stray Radiation" means the sum of leakage and scattered radiation.

(108) "Supervision" means the supervising individual routinely reviews and monitors the work being performed. There are three categories of supervision:

(a) "General Supervision" means that the supervisor is not required to be on-site, but must be available for direct communication, either in person, by telephone, or other electronic means.

(b) "Direct Supervision" means that the supervisor is physically present in the building and immediately available to furnish assistance as needed.

(c) "Personal Supervision" means that the supervisor is physically present in the room during the performance of the procedure at all times.

(109) "Technique Factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses;

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(110) "Termination of Irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(111) "Traceable to a National Standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(112) "Tube" means an X-ray tube, unless otherwise specified.

(113) "Tube Housing Assembly" means the tube housing with tube installed. It includes high-voltage and filament transformers and other appropriate elements when such are contained within the tube housing.

(114) "Tube Rating Chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(115) "Unprotected Area" means any area in which the exposure rate, due to the use of the radiation machine under normal operating procedures and workload, exceeds any of the following limits:

(a) Two mR in any one hour;

(b) 100 mR in any seven consecutive days; or

(c) 500 mR in any one year.

(116) "Useful Beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(117) "Variable-Aperture Beam-Limiting Device" means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

(118) "Visible Area" means that portion of the input surface of the image receptor over which the incident X-ray photons are producing a visible image.

(119) "Wedge Filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

(120) "X-ray Control" means a device which controls input power to the X-ray high-voltage generator and the X-ray tube. It includes equipment such as exposure switches (control), timers, photo timers, automatic brightness stabilizers and similar devices, which control the technique factors of an X-ray exposure.

(121) "X-ray Equipment" means an X-ray system, subsystem, or component thereof. Types of equipment are as follows:

(a) "Mobile equipment" means X-ray equipment mounted on a permanent base with wheels and casters for moving while completely assembled and intended to be taken from one geographical location to another or from one room to another;

(b) "Portable equipment" means X-ray equipment designed to be hand-carried but not hand-held during operations.

(c) "Stationary equipment" means X-ray equipment which is installed in a fixed location; such as bolted to the floor or wall;

(d) "Transportable" means X-ray equipment installed in a vehicle or trailer;

(e) "Hand-held unit" means a self contained X-ray machine designed so that it can be held in one or two hands to perform intra-oral radiography or other Authority approved radiography.

(122) "X-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/ or button of an X-ray machine, or physically positions patients or animals for a radiograph (see "Operator").

(123) "X-ray Field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(124) "X-ray High-Voltage Generator" means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements.

(125) "X-ray System" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(126) "X-ray Subsystem" means any combination of two or more components of an X-ray system for which there are requirements specified in this division.

(127) "X-ray Tube" means any electron tube which is designed to be used primarily for the production of X-rays.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0025
Protection of Patients and Personnel

(1) Except for patients who cannot be moved out of the unprotected area, only the staff and ancillary personnel required for the medical procedure or training shall be in the unprotected area during the radiographic exposure.

(2) Other than the patient being examined, all individuals shall be positioned such that no part of the body will be struck by the useful beam unless protected by 0.5 millimeter (mm) lead equivalent.

(3) Staff and ancillary personnel shall be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent.

(4) Patients who cannot be removed from the room shall be protected from the direct scatter radiation by whole body protective barriers of 0.25 mm lead equivalent or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and the nearest edge of the image receptor.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0040
Patient Holding and Restraint

(1) When a patient or film must be provided with auxiliary support during a radiation exposure:

(a) Mechanical holding devices shall be provided and used when the technique permits. The safety rules, required by OAR 333-106-0020, shall list individual projections where holding devices cannot be used.

(b) Written safety procedures, as required by OAR 333-106-0020, shall indicate the requirements for selecting a holder and the procedure the holder shall follow.

(c) The human holder shall be protected, as required by OAR 333-106-0025.

(2) No individual shall be used routinely to hold film or patients.

(3) Occupationally exposed personnel are prohibited from holding human patients during radiographic examination.

(4) The Authority may require a separate record to be maintained which would include the name of the human holder, date of the examination, number of exposures and technique factor used for the exposure(s).

(5) In those cases where the patient must hold the film, except during intraoral examinations, any portion of the body other than the area of clinical interest exposed to the useful beam shall be protected by not less than 0.5 mm lead equivalent material.

(6) Holding of patients shall be permitted only when it is otherwise impossible to obtain the necessary radiograph.

(7) Individuals stressing joints shall be exempt from section (3) of this rule.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0045
Use of Best Procedures and Equipment

(1) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(2) The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations.

(3) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality, see Tables 1, 2 and 3. The referenced tables are available on the Program's website: www.healthoregon.org/rps.

(4) Portable or mobile X-ray equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary X-ray installation due to the medical status of the patient or the inability of the patient to be left alone during the imaging procedure except as permitted under section (5) of this rule.

(5) Hand-held dental units may be used at facilities or programs as defined in ORS 680.205(1) and (2).

(6) X-ray systems subject to OAR 333-106-0301 shall not be utilized in procedures where the source to patient distance is less than 30 centimeters (cm).

(7) Cardboard cassettes without screens shall not be used (dental intraoral excluded).

(8) The number of radiographs taken for any radiographic examination should be the minimum number needed to adequately diagnose the clinical condition.

(9) Use of techniques designed to compensate for anatomical thickness variations after the primary beam has exited the patient is specifically prohibited. This includes "split screen" imaging techniques whereby multiple speed intensifying screens are placed in the same cassette, or any techniques which rely on attenuation of secondary (remnant) radiation for compensatory purposes. Lead lined grids, which are designed to reduce scattered radiation are excluded from this provision.

(10) Filter slot covers shall be provided for the X-ray operator's protection.

(11) Facilities shall determine or cause to be measured the typical patient exposure for their most common radiographic examinations. The exposures shall be recorded as milliroentgens measured in free air at the point of skin entrance for an average patient. These exposure amounts must then be compared to existing guidelines and rules, and if they exceed such guidelines or rules, action must be taken to reduce the exposure while at the same time maintaining or improving diagnostic image quality. In addition, typical patient exposure values shall be posted in the radiographic examination rooms so that they are readily available to administrators, X-ray operators, patients and practitioners.

(12) Protective equipment including aprons, gloves and shields shall be checked annually for defects, such as holes, cracks and tears to assure reliability and integrity. A record of this test shall be made and maintained for inspection by the Authority. If such defect is found, equipment shall be replaced or removed from service until repaired. Fluoroscopy shall only be used for this purpose if a visual and manual check indicated a potential problem.

(13) Dental X-ray machines designed and manufactured to be used for dental purposes shall be restricted to dental use only.

(14) An X-ray quality control program shall be implemented when required by the Authority.

(15) All X-ray equipment must be capable of functioning at the manufacturer's intended specifications.

(16) All patients' radiographic images or copies shall be made available for review by any practitioner of the healing arts, currently licensed by the appropriate Oregon licensing board, upon request of the patient.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0055
X-ray Operator Training

(1) The registrant shall assure that individuals who will be operating the X-ray equipment by physically positioning patients or animals, determining exposure parameters, or applying radiation for diagnostic purposes shall have adequate training in radiation safety.

(a) Radiation safety training records shall be maintained by the registrant for each individual who operates X-ray equipment. Records must be legible and meet the requirements in OAR 333-120-0690.

(b) When requested by the Authority, radiation safety training records shall be made available.

(2) Adequate training in radiation safety means X-ray operators have completed an Authority approved radiation use and safety course.

(3) At a minimum, an Authority approved training course shall cover the following subjects:

(a) Nature of X-rays:

(A) Interaction of X-rays with matter ;

(B) Radiation units;

(C) X-ray production;
(D) Biological effects of X-rays; and
(E) Risks of radiation exposure.
(b) Principles of the X-ray machine:
(A) External structures and operating console;
(B) Internal structures:
(i) Anode; and
(ii) Cathode.
(C) Operation of an X-ray machine;
(D) Tube warm up;
(E) Factors affecting X-ray emission:
(i) mA;
(ii) kVp;
(iii) Filtration; and
(iv) Voltage waveform.
(c) Principles of radiation protection:
(A) Collimation;
(B) Types of personal protection equipment and who must wear it;
(C) ALARA;
(D) Time, distance, shielding;
(E) Operator safety;
(F) Personal dosimetry:
(i) Types of dosimetry;
(ii) Proper placement of dosimetry; and
(iii) Situations that require dosimetry.
(G) Occupational and non-occupational dose limits.
(d) Radiographic technique:
(A) Factors affecting technique choice:
(i) Thickness of part;
(ii) Body composition;
(iii) Pathology; and
(iv) Film versus computed radiography (CR) and digital radiography (DR).
(B) How to develop an accurate chart;
(C) Low dose techniques;
(D) Pediatric techniques (does not apply to veterinary); and
(E) AEC Techniques.
(e) Darkroom:
(A) Safelights;
(B) Chemical storage;
(C) Film storage; and
(D) Darkroom cleanliness.
(f) Image processing:
(A) Automatic film processing;
(B) Dip tank film processing;
(C) Computed radiography (CR) processing; and
(D) Digital radiography (DR) processing.
(g) Image critique:
(A) Reading room conditions;
(B) Light box conditions;
(C) Image identification;
(D) Artifacts;
(E) Exposure indicators for CR and DR;
(F) Technical parameter evaluation; and
(G) Positioning evaluation.
(h) Veterinary X-ray use (for veterinary courses only):
(A) Types of animal restraints;
(B) Small animal versus large animal;
(C) Film holders; and
(D) Portable X-ray machine safety.
(i) Applicable federal and state radiation regulations including those portions of chapter 333, divisions 100, 101, 103, 106, 111, 120, and 124.

(4) Dental X-ray operators who meet the following requirements are considered to have met the requirements in section (1) of this rule:

(a) Currently licensed by the Oregon Board of Dentistry as a Dentist or Dental Hygienist; or

(b) Is a Dental Assistant who is certified by the Oregon Board of Dentistry in radiologic proficiency.

(c) Dental radiology students in an approved Oregon Board of Dentistry dental radiology course are permitted to take dental radiographs on human patients during their clinical training, under the direct supervision of a Dentist or Dental Hygienist currently licensed, or a Dental Assistant who has been certified in radiologic proficiency by the Oregon Board of Dentistry.

(5) Diagnostic medical X-ray operators who meet the following requirements are considered to have met the requirements of section (1) of this rule:

(a) Holds a current license from the Oregon Board of Medical Imaging; or

(b) Holds a current limited X-ray machine operator permit from the Oregon Board of Medical Imaging; or

(c) Is a student in a two-year approved school of Radiologic Technology as defined in ORS 688.405 while practicing Radiologic Technology under the direct supervision of a radiologist who is currently licensed with the Oregon Medical Board or a radiologic technologist who is currently registered with the American Registry of Radiologic Technologists and licensed with the Oregon Board of Medical Imaging; or

(d) Is a student in an Oregon Board of Medical Imaging approved limited permit program under a Radiologic Technologist who is currently registered with the American Registry of Radiologic Technologists and licensed by the Oregon Board of Medical Imaging.

(6) In addition to the training outlined in section (3) of this rule, medical X-ray equipment operators using diagnostic radiographic equipment on human patients, and who are not regulated by the Oregon Board of Medical Imaging, must have 100 hours or more of instruction in radiologic technology including, but not limited to:

(a) Anatomy physiology, patient positioning, exposure and technique; and

(b) Appropriate types of X-ray examinations that the individual will be performing; and in addition

(c) Receive 200 hours or more of X-ray laboratory instruction and practice in the actual use of an energized X-ray unit, setting techniques and practicing positioning of the appropriate diagnostic radiographic procedures that they intend to administer.

(7) All X-ray operators shall be able to demonstrate competency in the safe use of the X-ray equipment and associated X-ray procedures.

(8) When required by the Authority, applications training must be provided to the operator before use of X-ray equipment on patients.

(a) Records of this training must be maintained and made available to the Authority for inspection.

(b) The training may be in any format such as hands-on training by a manufacturer's representative, video or DVD instruction, or a training manual.

(9) X-ray equipment operators who have received their radiation safety training outside of Oregon will be considered to have met the training requirements in section (1) of this rule, if the Authority's or applicable Oregon Licensing Board's evaluation of their training or training and experience, reveals that they substantially meet the intent of section (3) of this rule.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 20-2010, f. & cert. ef. 9-1-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 24-2014, f. & cert. ef. 8-15-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0060
Radiation Use and Safety Instructor Qualifications

The training required in OAR 333-106-0055(1) must be taught by an Authority approved instructor. Approval will be based upon the following criteria.

(1) A medical use and safety instructor is an individual who is currently:

(a) Licensed as a Radiologic Technologist and approved as an education provider by the Oregon Board of Medical Imaging; or

(b) A dental radiation use and safety instructor is an individual who is currently licensed by the Oregon Board of Dentistry as a Dentist, a Hygienist, or has been approved by the Oregon Board of Dentistry as a radiation use and safety instructor.

(2) A veterinarian radiation use and safety instructor is an individual who is currently:

(a) Licensed by the Oregon Veterinary Medical Examining board as a Veterinarian, or a Veterinary Technician; or

(b) Is currently licensed as a Radiologic Technologist by the Oregon Board of Medical Imaging, and has completed training specific to veterinarian radiography, including training in animal restraint, and has a minimum of two years of experience in taking veterinary radiographs.

(3) On a case by case basis, if an evaluation by the Authority reveals the individual has alternative qualifications that are substantially equivalent

to the qualifications listed in subsections (1)(a), (1)(b), (2)(a) or (2)(b) of this rule or is an individual who is qualified under OAR 333-106-0005(80) as a qualified expert, or OAR 333-101-0230 as a Hospital Radiology Inspector.

Stat. Auth.: ORS 453.605 – 453.807
Stats. Implemented: ORS 453.605 – 453.807
Hist.: PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0201
Fluoroscopic X-ray Systems

All fluoroscopic X-ray systems shall meet the following requirements:

(1) Primary Barrier:

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID;

(b) The X-ray tube used for fluoroscopy shall not produce X-rays unless the barrier is in position to intercept the entire useful beam.

(2) Nonimage intensified types of fluoroscopes shall not be used.

(3) Image-Intensified Fluoroscopy and Spot Filming:

(a) For image-intensified fluoroscopic equipment, neither the length nor the width of the X-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID. The sum of the excess length and the excess width shall be no greater than four percent of the SID. In addition:

(A) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or a visible area of greater than 300 square cm shall be provided with means for stepless adjustment of the X-ray field;

(B) All equipment with a fixed SID and a visible area of 300 square cm or less shall be provided with either stepless adjustment of the X-ray field or with means to further limit the X-ray field size at the plane of the image receptor to 125 square cm or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of 5 cm by 5 cm or less;

(C) For equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor; and

(D) Compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor. For rectangular X-ray fields used with circular image reception, the error in alignment shall be determined along the length and width dimensions of the X-ray field which pass through the center of the visible area of the image receptor.

(b) Spot-film devices which are certified components shall meet the following additional requirements:

(A) Means shall be provided between the source and the patient for adjustment of the X-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot-film selector. Such adjustment shall be automatically accomplished except when the X-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the X-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;

(B) It shall be possible to adjust the X-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, 5 cm by 5 cm;

(C) The center of the X-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two percent of the SID; and

(D) On spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(c) If a means exists to override any of the automatic X-ray field size adjustments required in section (3) of this rule, that means:

(A) Shall be designed for use only in the event of system failure;

(B) Shall incorporate a signal visible at the fluoroscopist's position which will indicate whenever the automatic field size adjustment is overridden; and

(C) Shall be clearly and durably labeled as follows: "FOR X-RAY FIELD LIMITATION SYSTEM FAILURE"

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0205
Activation of the Fluoroscopic Tube

(1) X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of any exposure. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the X-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(2) Proper training in the operation of fluoroscopic X-ray equipment is required for all operators and shall include but not be limited to the following:

(a) Principles and operation of the fluoroscopic X-ray machine:
(A) Generating X-rays;
(B) kVp and mA;
(C) Image intensification;
(D) High level control versus standard operating mode;
(E) Magnification (multi-field);
(F) Automatic Brightness Control (ABC);
(G) Pulsed versus continuous X-ray dose rates;
(H) Image recording modes;
(I) Imaging Systems (TV and Digital); and
(J) Contrast, noise and resolution.
(b) Radiation units:
(A) Traditional units;
(B) SI units; and
(C) Dose Area Product.
(c) Typical fluoroscopic outputs:
(A) Patient skin entrance dose;
(B) Standard Roentgen per minute (R/min) dose rates; and
(C) High level/Boost enable Roentgen per minute (R/min) dose rates.
(d) Dose reduction techniques for fluoroscopy:
(A) Collimation;
(B) X-ray tube and image intensifier placement;
(C) Patient size versus technique selection;
(D) Grid use;
(E) Last image hold;
(F) Additional beam filtration;
(G) Gantry angles;
(H) Use of spacer cone; and
(I) Pulsed fluoroscopy.
(e) Factors affecting personnel dose:
(A) Patient dose;
(B) Scatter radiation;
(C) Tube and image intensifier placement; and
(D) Time, distance and shielding.
(f) Protective devices:
(A) Lead aprons and gloves;
(B) Thyroid collars;
(C) Protective glasses;
(D) Leaded drapes;
(E) Bucky slot cover; and
(F) Protective shields/barriers.
(g) Radiation exposure monitoring:
(A) Personnel monitors;
(B) Placement of personnel monitors; and
(C) Occupational and non-occupational dose limits.
(h) Biological effects of X-ray radiation:
(A) X-rays and particulate matter;
(B) Absorption variables (field size, dose rate, as an example);
(C) Scatter radiation;
(D) Cell sensitivity;
(E) Acute effects; and
(F) Latent effects.
(i) Applicable regulations:
(A) Federal; and
(B) Oregon Administrative Rules for the Control of Radiation to include, but not limited to, chapter 333, divisions 101, 103, 106, 111 and 120.

(3) The operation of fluoroscopic equipment shall be performed by a properly trained operator. The following categories of operators are considered to have met the training requirements in section (2) of this rule:

(a) Radiologists currently licensed in Oregon;

(b) Non-Radiologist practitioners who have successfully completed a training program from an Authority approved resource or have been operating fluoroscopic equipment prior to April 11, 2005;

(c) Radiologic Technologists who have a permanent or temporary license from the Oregon Board of Medical Imaging (OBMI) to practice radiography;

(d) R.P.A.s and R.R.A.s who are licensed by the OBMI; and

(e) Students currently enrolled in an approved school of Radiologic Technology as defined in ORS 688.405.

(4) Supervision requirements for operators of fluoroscopic equipment. The operation of fluoroscopic equipment by properly trained operators must comply with the following supervisory requirements:

(a) Radiologists may operate fluoroscopic equipment with no supervision.

(b) Non-radiologist practitioners who have had proper training in the use and operation of fluoroscopic X-ray equipment may operate fluoroscopic equipment without supervision provided that the registrant arranges to have a radiologist or medical or health physicist assist in:

(A) Developing fluoroscopic and radiation safety policies and procedures;

(B) Conducting an on-site practical evaluation of the Non-Radiologist practitioner's knowledge of radiation safety practices and ability to operate the fluoroscopic equipment; and

(C) At least annually, review the registrant's fluoroscopy program. The review includes an evaluation of the fluoroscopic on-times Quality Assurance reports, condition of fluoroscopic equipment and compliance with current rules. The registrant shall correct any deficiencies noted by the review.

(c) Radiologic Technologists who have a permanent or temporary license from the OBMI to practice radiography may operate fluoroscopic equipment under the personal or direct supervision of a radiologist or a non-radiologist practitioner who has had proper training in the use and operation of fluoroscopic X-ray equipment.

(d) R.R.A.s or R.P.A.s may operate fluoroscopic equipment under the direct supervision of a radiologist.

(e) Students currently enrolled in an approved school of Radiologic Technology as defined in ORS 688.405, may operate fluoroscopic equipment under the personal supervision of a radiologist or an R.T. while in the clinical phase of training.

(5) The operation of fluoroscopic equipment is restricted to the healing arts exclusively for the purpose of localization and to assist physicians in obtaining images for diagnostic purposes.

(6) Overhead fluoroscopy is not to be used as a positioning tool for radiographic examinations except for those fluoroscopic examinations specified in the registrant's written policies/procedures for fluoroscopy.

(7) All images formed by the use of fluoroscopy shall be viewed, directly or indirectly, and interpreted by a radiologist, cardiologist, non-radiologist practitioner or other qualified specialist. R.R.A.s and R.P.A.s may issue a preliminary report; however, the final report must be issued by their supervising radiologist.

(8) Written procedures for fluoroscopic X-ray equipment operators shall be available at the worksite and include:

(a) A list of all individuals who are permitted to operate fluoroscopic X-ray equipment at the facility;

(b) A list of the fluoroscopic X-ray equipment that each operator is qualified to operate;

(c) Written procedures regarding the set up and operation of each fluoroscopic X-ray machine registered to the facility;

(d) Written radiation safety procedures pertaining to the use and operation of fluoroscopy; and

(e) The name and title of the individual who is responsible for overseeing the fluoroscopy program.

(9) Facilities shall determine, or cause to be determined, the typical patient entrance exposure rate for their most common fluoroscopic examinations. The determination shall be made using an attenuation block as described in OAR 333-106-0005(7) using measurement protocol in compliance with OAR 333-106-0210 and expressed in Roentgens per minute (R/min.) or milliRoentgens per minute (mR/min.). In addition, these entrance exposure rates shall be posted in the room where fluoroscopic examinations are conducted so that they are readily available to administrators, X-ray operators, patients and practitioners.

(10) Facilities that utilize fluoroscopy shall maintain a record of the cumulative fluoroscopic exposure time used for each examination. The record must indicate the patient's name, the type of examination, the date of the examination, the fluoroscopist's name, the fluoroscopic room in which the examination was done and the total cumulative fluoroscopic on-time for each fluoroscopic examination and:

(a) Established cumulative fluoroscopic on-time benchmarks for at least two (if applicable) of the most common types of fluoroscopic examinations performed at the facility's site in each of the following categories:

(A) Routine procedures performed on adults;

(B) Routine procedures performed on children;

(C) Orthopedic procedures performed in surgery;

(D) Urologic procedures performed in surgery;

(E) Angiographic procedures performed; and

(F) Interventional cardiac studies.

(b) Develop and perform periodic (not to exceed 12 month intervals) quality assurance studies to determine the status of each individual fluoroscopist's cumulative on-time in relation to the fluoroscopic benchmarks established for individual fluoroscopic examinations;

(c) Take appropriate action when the established benchmarks are consistently exceeded. The Radiation Safety Committee (RSC) must review the results of the cumulative fluoroscopic on-time Quality Assurance Study and take corrective action regarding those individuals who have exceeded the benchmarks established by the facility for a particular procedure more than 10 percent of the total times the individual performed the procedure during the study period. Documentation of the RSC review, as well as any corrective actions taken, must be available for Authority review. Corrective actions, at a minimum, include:

(A) Notification of the individual; and

(B) Recommendation that the individual undergo additional coaching and training in the safe use of fluoroscopic equipment in order to assist them in reducing their cumulative fluoroscopic on-times.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0210
Fluoroscopic Entrance Exposure Rates

(1) Fluoroscopic equipment manufactured before May 19, 1995 that is provided with Automatic Exposure Rate Control (AERC) shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 10 roentgens (R) (2.58 mC/kg) per minute, at a point where the center of the useful beam enters the patient, except:

(a) During the recording of fluoroscopic images; or

(b) When optional high-level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 5 R (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(2) Fluoroscopic equipment that is not provided with AERC shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 5 R (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, except:

(a) During the recording of fluoroscopic images; or

(b) When optional high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(3) Equipment with both an AERC mode and a manual mode. Fluoroscopic equipment that is provided with both an AERC and a manual mode shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 10 R (2.58 mC/kg) per minute in either mode at a point where the center of the useful beam enters the patient, except:

(a) During the recording of fluoroscopic images; or

(b) When the mode or modes have an optional high-level control, in which case that mode or modes shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 5 R (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(4) Exemptions. Fluoroscopic radiation therapy simulation systems are exempt from the requirements set forth in sections (1), (2), and (3) of this rule.

(5) For fluoroscopic equipment manufactured on and after May 19, 1995, the following requirements will apply:

(a) Fluoroscopic equipment operable at any combination of tube potential and current that will result in an exposure rate in excess of 5 R (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient shall be equipped with AERC. Provision for manual selection of the technique factors may be provided.

(b) Fluoroscopic equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 10 R (2.58 mC/kg) per minute at a point where the center of the useful beam enters the patient except:

(A) During the recording of fluoroscopic images from an X-ray image-intensifier tube using photographic film or a video camera when the X-ray source is operated in a pulsed mode.

(B) When an optional high-level control is activated, the equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 20 R per minute at a point where the center of the useful beam enters the patient. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(6) Measuring compliance. Compliance with the requirements of this rule shall be determined as follows:

(a) Movable grids and compression devices shall be removed from the useful beam during the measurement;

(b) If the source is below the table, exposure rate shall be measured 1 cm above the tabletop or cradle;

(c) If the source is above the table, the exposure rate shall be measured at 30 cm above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(d) For a C-arm type of fluoroscope, the exposure rate shall be measured 30 cm from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than 30 cm from the input surface of the fluoroscopic imaging assembly;

(e) For a lateral type fluoroscope, the exposure rate shall be measured at a point 15 cm from the centerline of the X-ray table and in the direction of the X-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is moveable, it shall be positioned as closely as possible to the lateral X-ray source, with the end of the beam-limiting device or spacer no closer than 15 cm to the centerline of the X-ray table.

(7) Exemptions. Fluoroscopic radiation therapy simulation systems are exempt from the requirement set forth in section (5) of this rule.

(8) Periodic measurement of entrance exposure rate shall be performed as follows:

(a) Such measurement shall be made annually or after any maintenance of the system which might affect the exposure rate; and

(b) Results of these measurements shall be posted where any fluoroscopist may have ready access to such results while using the fluoroscope and in the record required in OAR 333-106-0105(1)(c). The measurement results shall be stated in roentgens per minute and include the technique factors used in determining such results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results; and

(c) Personnel monitoring devices may be used to perform the measurements required by subsection (8)(a) of this rule, provided the measurements are made as described in subsection (8)(d) of this rule;

(d) Conditions of periodic measurement of entrance exposure rate are as follows:

(A) The measurement shall be made under the conditions that satisfy the requirements of section (6) of this rule; and

(B) The kVp shall be the kVp typical of clinical use of the X-ray system; and

(C) The X-ray system(s) that incorporates automatic exposure control shall have sufficient material placed in the useful beam to produce a milliamperage typical of the use of the X-ray system or the worst case; and

(D) X-ray system(s) that do not incorporate an automatic exposure control shall utilize a milliamperage typical of the clinical use of the X-ray system.

NOTE: Materials should be placed in the useful beam when conducting these periodic measurements to protect the imaging system.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0215
Fluoroscopic Barrier Transmitted Radiation Rate Limits

(1) The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed two mR (0.516 uC/kg) per hour at 10 cm from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.

(2) Measuring Compliance of Barrier Transmission:

(a) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square cm with no linear dimension greater than 20 cm;

(b) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 cm above the tabletop;

(c) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 cm;

(d) Movable grids and compression devices shall be removed from the useful beam during the measurement; and

(e) The attenuation block shall be positioned in the useful beam 10 centimeters from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0220
Fluoroscopic Indication of Potential and Current

During fluoroscopy and cinefluorography X-ray tube potential and current shall be continuously indicated. Deviation of X-ray tube potential and current from the indicated values shall not exceed the maximum deviation stated by the manufacturer.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0225
Fluoroscopic Source-to-Skin Distance

The source-to-skin distance shall not be less than:

(1) 38 cm on stationary fluoroscopes manufactured on or after August 1, 1974;

(2) 35.5 cm on stationary fluoroscopes manufactured prior to August 1, 1974;

(3) 30 cm on all mobile fluoroscopes; and

(4) 20 cm for image intensified fluoroscopes used for specific surgical application. The written safety procedures must provide precautionary measures to be adhered to during the use of this device.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0240
Fluoroscopic Control of Scattered Radiation

(1) Fluoroscopic table designs when combined with procedures utilized shall be such that no unprotected part of any staff or ancillary individual's body shall be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall not be less than 0.25 mm lead equivalent.

(2) Equipment configuration when combined with procedures shall be such that no portion of any staff or ancillary individual's body, except the extremities, shall be exposed to the unattenuated scattered radiation emanating from above the tabletop unless that individual:

(a) Is at least 120 cm from the center of the useful beam; or

(b) The radiation has passed through not less than 0.25 mm lead equivalent material including, but not limited to, drapes, Bucky-slot cover, sliding or folding panel, or self-supporting curtains, in addition to any lead equivalency provided by the protective apron referred to in OAR 333-106-0025;

(c) Upon application to the Authority, providing adequate justification, exceptions to this section may be made in some special procedures where a sterile field will not permit the use of the normal protective barriers or where the protective barriers would interfere with the procedures.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0245
Fluoroscopic Radiation Therapy Simulation Systems

Radiation therapy simulation systems shall be exempt from all the requirements of OAR 333-106-0201 through 333-106-0245 provided that:

(1) Such systems are designed and used in such a manner that no individual other than the patient is in the X-ray room during periods of time when the system is producing X-rays; and

(2) Systems which do not meet the requirements of OAR 333-106-0230 are provided with a means of indicating the cumulative time that an individual patient has been exposed to X-rays. Procedures shall require in such cases that the timer be reset between examinations.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0301
Beam Limitation for Radiographic Systems Other Than Fluoroscopic, Dental Intraoral, Veterinary Systems, or Computed Tomography(CT)

(1) The useful beam shall be limited to the area of clinical interest.

(2) General Purpose Stationary and Mobile X-ray Systems:

(a) There shall be provided a means for stepless adjustment of the size of the X-ray field, where the adjustment of each dimension of the field is independent of the other;

(b) A method shall be provided for visually defining the perimeter of the X-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the X-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the X-ray beam;

(c) Evidence of compliance with subsections (2)(a) and (b) of this rule shall be shown on each radiograph taken, either by imaging part of the collimator on the radiograph or by imaging collimator nubs or pointers;

(d) Beam-defining lights used for visually defining perimeters of the X-ray field shall have an illumination great enough to be visualized by the operator under ambient light conditions;

(e) The Authority may grant an exemption on noncertified X-ray systems to subsections (2)(a) and (b) of this rule provided the registrant makes a written application for such exemption and in that application:

(A) Demonstrates it is impractical to comply with subsections (2)(a) and (b) of this rule; and

(B) The purpose of subsections (2)(a) and (b) of this rule will be met by other methods.

(3) In addition to the requirements of section (2) of this rule, all stationary general purpose X-ray systems shall meet the following requirements:

(a) A method shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, to align the center of the X-ray field with respect to the center of the image receptor to within two percent of the SID, and to indicate the SID to within two percent;

(b) The beam-limiting device shall indicate numerically the field size in the plane of the image receptor to which it is adjusted; and

(c) Indication of field size dimensions and SID's shall be specified in inches or centimeters, and shall be such that aperture adjustments result in X-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within two percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor.

(4) Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the X-ray field with the center of the image receptor to within two percent of the SID, or shall be provided with means to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(5) Special Purpose X-ray Systems:

(a) Means shall be provided to limit the X-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than two percent of the SID when the axis of the X-ray beam is perpendicular to the plane of the image receptor;

(b) Means shall be provided to align the center of the X-ray field with the center of the image receptor to within two percent of the SID, or means shall be provided to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. Compliance shall be determined with the axis of the X-ray beam perpendicular to the plane of the image receptor;

(c) Subsections (5)(a) and (b) of this rule may be met with a system that meets the requirements for a general purpose X-ray system as specified in section (2) of this rule or, when alignment means are also provided, may be met with either:

(A) An assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed with each such device having clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(B) A beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0325
Intraoral Dental Radiographic Systems

In addition to the provisions of OAR 333-106-0010 through 333-106-0101, the requirements of this rule apply to X-ray equipment and facilities where intraoral dental radiography is conducted. Requirements for extraoral dental radiographic systems are covered in OAR 333-106-0301 through 333-106-0320. Intraoral dental radiographic systems must meet the following requirements:

(1) Source-to-Skin Distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance, to not less than 18cm.

(2) Beam Limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the X-ray beam such that:

(a) If the minimum source-to-skin distance (SSD) is 18 centimeters or more, the X-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven centimeters; or

(b) If the minimum SSD is less than 18 centimeters, the X-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six centimeters.

(3) Radiation Exposure Control (Timers). Means shall be provided to control the radiation exposure through the adjustment of exposure time in seconds, milliseconds (ms) or, number of pulses, or current/milliamps (mA), or the product of current and exposure time (mAs) or adjustment of kVp. In addition:

(a) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, such as the depression of a switch. Radiation exposure shall not be initiated without such an action; and

(b) It shall not be possible to make an exposure when the timer is set to a "0" or "off" position if either position is provided;

(c) Exposure Indication. Means shall be provided for visual indication, observable at or from the operator's protected position, whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(d) Timer Reproducibility. With a timer setting of 0.5 second or less, the average exposure time (T) shall be greater than or equal to five times the minimum exposure time (Tmax) minus the minimum exposure time (Tmin) when four timer tests are performed: (T) >5 (Tmax – Tmin).

(A) Means shall be provided to terminate the exposure at a preset, time interval, mAs, number of pulses, or radiation to the image receptor.

(B) An X-ray exposure control shall be incorporated into each system such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 second or less.

(C) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "0".

(4) Radiation Exposure Control Location and Operator Protection. Each X-ray control must be located in such a way as to meet the following requirements:

(a) The exposure switch shall be able to be operated in a protected area, as defined in OAR 333-106-0005(77), and the operator shall remain in that protected area during the entire exposure; and

(b) The operator's protected area shall provide visual indication of the patient during the X-ray procedure.

(c) Mobile and portable X-ray systems which are:

(A) Used for greater than one week in the same location, such as a room or suite, shall meet the requirements of subsections (4)(a) and (4)(b) of this rule.

(B) Used for less than one week at the same location, such as a room or suite, shall be provided with:

(i) Either a protective barrier of at least 6.5 feet (2 meters) high for operator protection; or

(ii) A means to allow the operator to be at least nine feet (2.7 meters) from the tube housing assembly while making exposures; or

(iii) A full length protective apron, of not less than 0.25 millimeter lead equivalent for operator protection, when using a hand-held dental intraoral X-ray machine.

(5) Exposure Reproducibility. The coefficient of variation shall not exceed 0.05 when all technique factors are held constant. This requirement shall be deemed to have been met if, when four exposures are made at identical technique factors, the value of the average exposure (E) is greater than or equal to five times the maximum exposure (Emax) minus the minimum exposure (Emin): E >5 (Emax - Emin)

(6) Accuracy.

(a) Deviation of technique factors from the indicated values for kVp and exposure time (if time is independently selectable) shall not exceed the limits specified for that system by its manufacturer.

(b) kVp Limitations. Dental X-ray machines with a nominal fixed kVp of less than 55 kVp shall not be used to make diagnostic dental radiographs on humans.

(7) Administrative Controls.

(a) Patient and film holding devices shall be used when the techniques permit;

(b) The tube housing and the PID shall not be hand held during an exposure;

(c) The X-ray system shall be operated in such a manner that the useful beam at the patient's skin does not exceed the requirements of section (2) of this rule or its updated version;

(d) All patients shall be provided with a leaded apron during any dental X-ray exposure;

(e) Dental fluoroscopy without image intensification shall not be used;

(f) Pointed cones shall not be utilized unless specific authorization has been granted by the Authority.

(8) Hand-held X-ray systems.

(a) Registrants must provide for security and safe storage while not in use. A report must be filed with the Authority within 72 hours if the hand-held unit is lost or stolen.

(b) The image receptor used with hand-held dental X-ray systems must either be:

(A) A speed class of intra-oral film designated as "E/F", "F" or faster; or

(B) A digitally acquired image (CR or DR).

(c) The hand-held X-ray system must be equipped with a permanently attached backscatter shield of 0.25 mm Pb equivalent.

(d) The backscatter shield must be designed to appropriately protect the operator during an exposure. The manufacturer of the hand-held unit must provide documentation to the Authority of the design specifications of the backscatter shield's protection to the operator prior to sale and distribution in the State of Oregon.

(e) The hand-held unit must be capable of a minimum of 60 kVp and 2.0 mA.

(f) Hand-held units not meeting the requirements of subsections (8)(c), (8)(d) and (8)(e) of this rule may not be sold, distributed or used in the State of Oregon.

(9) Hand-held dental X-ray administrative controls.

(a) The operator must wear a whole body protective apron and thyroid collar of 0.25 mm of lead equivalent when using the unit.

(b) Hand-held units must meet the requirement of OAR 333-106-0045(3).

(A) The hand-held unit shall not be used for patient examinations in hallways and waiting rooms.

(B) The unit can only be operated in an enclosed room when possible. All individuals except the X-ray operator and the patient must leave the room and stand behind a protective barrier or be at least six feet from the X-ray source if a protective barrier is not available during radiographic exposures.

(c) Operators must complete machine specific applications training as described in OAR 333-106-0055(8) before using a hand-held unit. Training on the safe use of the unit shall be documented and include at a minimum:

(A) Proper positioning of the unit to ensure an adequate protected position;

(B) Limitations on the use of position indicating devices that require longer distances to the patient's face;

(C) Diagrams such as drawings, illustrations, or schematics of protected position and location in relationship to the unit;

(D) Diagrams such as drawings, illustrations, or schematics of the effect of improper distance or removal of shielding device; and

(E) Diagrams such as drawings, illustrations, schematics of common examples of improper positioning of the unit and or location of the operator.

(d) An appropriate receptor holder must be used during the X-ray exposure.

(e) A PID must be used during the X-ray exposure.

(f) A hand-held unit shall be held without any motion during a patient examination. A tube stand may be utilized to immobilize the hand-held unit during a patient examination.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 20-2010, f. & cert. ef. 9-1-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 24-2014, f. & cert. ef. 8-15-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0601

Veterinary Medicine Radiographic Installations Additional Requirements

(1) Equipment:

(a) The protective tube housing shall be of the diagnostic type;

(b) Collimating devices shall be provided and used for collimating the useful beam to the area of clinical interest;

(c) All X-ray equipment sold after October 1991 must be equipped with a variable adjustable collimator and beam-defining light that meets all of the requirements of OAR 333-106-0301(1), (2) and (3);

(d) The total filtration permanently in the useful beam shall not be less than 0.5 mm Al equivalent for machines operating up to 50 kVp, 1.5 mm Al equivalent for machines operating between 50 and 70 kVp, and 2.5 mm Al equivalent for machines operating above 70 kVp;

(e) A device shall be provided to terminate the exposure after a preset time or exposure;

(f) A dead-man type of exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator can stand out of the useful beam and at least 12 feet (3.66 m) from the animal during all X-ray exposures.

(2) Structural Shielding: All wall, ceiling and floor areas shall be equivalent to or provided with applicable protective barriers to assure compliance with division 120.

(3) Operating Procedures:

(a) All individuals shall stand well away from the useful beam and the animal during radiographic exposures;

(b) No individual shall be in the X-ray room while exposures are being made unless such individual's assistance is required;

(c) When an animal must be held in position during radiography, mechanical supporting or restraining devices shall be available and used as appropriate.

(d) If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, such as protective gloves and apron, and that individual shall be so positioned that no part of the body will be struck by the useful beam. The exposure of any individual used for this purpose shall be monitored with appropriate personnel monitoring devices.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0700
Mammography X-Ray Systems Definitions

In addition to the definitions provided in division 100 and 106 of this chapter, the following definitions shall be applicable to the rules in this division.

(1) "Air Kerma" means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a given mass of air. The unit used to measure the quantity of kerma is the gray (Gy). For X-rays with energies below 300 kiloelectronvolts (keV), 1Gy=100 rad and is equivalent to 114 (R) of exposure.

(2) "FDA" means the Food and Drug Administration.

(3) An "image receptor support surface" means that portion of the image receptor support which is the X-ray input surface and is used to support the patient's breast during mammography.

(4) "Interpreting physician" means a licensed physician who interprets mammographic images and meets the qualifications of OAR 333-106-0750(2).

(5) "Lead Interpreting Physician" means a physician who interprets mammographic images, meets the qualifications of OAR 333-106-0750(2), and who has the general responsibility for ensuring that the registrant's quality assurance program meets all applicable rules and regulations.

(6) "Mammographic screening" means the use of radiation to test women for the detection of diseases of the breast when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such tests for the purposes of diagnosis. Screening is considered as self-referral by asymptomatic women without physicians orders (see OAR 333-100-0020(5)(6) and 333-106-0035(3)).

(7) "Mammography" means radiography of the breast.

(8) "Mammography equipment evaluation" means an onsite assessment of a mammography unit(s) or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable state and federal standards.

(9) "Mammography unit(s)" means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum; An X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

(10) "Medical Physicist" means a person trained in evaluating the performance of mammography equipment and quality assurance programs and meets the qualifications of OAR 333-106-0750(3).

(11) "MQSA" means the Mammography Quality Standards Act of 1992.

(12) "Phantom" means a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer. (The "FDA accepted phantom" meets this requirement.)

(13) "Quality Assurance" is a comprehensive concept that comprises all of the management practices instituted by the registrant or the registrant's representative/s to ensure that:

(a) Every imaging procedure is necessary and appropriate to the clinical problem at hand;

(b) The images generated contain information critical to the solution of that problem;

(c) The recorded information is correctly interpreted and made available in a timely fashion to the patient's physician;

(d) The examination results in the lowest possible radiation exposure, cost, and inconvenience to the patient, consistent with subsection (13)(b) of this rule.

(14) "Quality Assurance Program" includes such facets as efficacy studies, continuing education, quality control, preventive maintenance, and calibration of equipment.

(15) "Quality Control" means a series of distinct technical procedures that ensure the production of a satisfactory product,such as a high quality screening or diagnostic image.

(16) "Quality Control Technologist" means an individual who is qualified under MQSA, and who is responsible for those quality assurance responsibilities not assigned to the Lead Interpreting Physician or to the Medical Physicist.

(17) "Resting period" means the period of time necessary to bleed out air that has been trapped between the radiographic film and intensifying screen during the loading process in the darkroom. This period of time is usually measured in minutes and determined by the individual manufacturer of the intensifying screen/mammography cassette combination.

(18) "Standard Breast" means a 4.2 cm thick compressed breast, consisting of 50 percent adipose, and 50 percent glandular tissue.

(19) "Survey" means an onsite physics consultation and evaluation of a registrant's mammography equipment, and quality assurance program performed by a medical physicist.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0735
Breast Density Notification

(1) As used in this rule:

(a) "Breast Density" refers to the relative amount of different tissues present in the breast. A dense breast has less fat than glandular and connective tissue. Mammogram films of breasts with higher density are harder to read and interpret than those of less dense breasts. (Source: National Cancer Institute).

(b) "Facility" has the meaning given that term in 42 U.S.C. 263b and includes but is not limited to a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis through mammography activities. "Facility" does not include a facility of the Department of Veterans Affairs.

(c) "Mammography activities" means the operation of equipment to produce a mammogram, the processing of the film, the initial interpretation of the mammogram and the viewing conditions for that interpretation.

(2) In all cases where a mammogram shows a patient has extreme or heterogeneous breast density, the facility shall incorporate the following notification within the lay summary mammography report provided to the patient:

DENSE BREAST TISSUE NOTIFICATION
Your mammogram shows that your breast tissue is dense. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to promote discussion with your health care provider. Together, you can decide if you may benefit from further screening. A report of your results was sent to your health care provider.

(3) The Dense Breast Tissue Notification statement and guidelines shall be included in the facility's policy on how they communicate mammography results to the patient and their health care providers.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 411
Stats. Implemented: 2013 OL Ch. 411
Hist.: PH 14-2013, f. 12-26-13, cert. ef. 1-1-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-106-0750
Mammography Personnel Qualifications

(1) Operator qualifications. In order to use any mammography X-ray machine the operator of the mammography X-ray unit must have the following qualifications:

(a) Have a current license issued by the Oregon Board of Medical Imaging; and

(b) Have prior to the effective date of these rules qualified as a radiologic technologist under the MQSA interim rules or completed 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not be limited to:

(A) Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, imaging patients with breast implants;

(B) The performance of 25 examinations under the personal supervision of an individual qualified under this section; and

(C) At least eight hours of training in each mammography modality to be used by the technologist in performing mammography exams; and

(D) Be currently registered and in good standing with the American Registry of Radiologic Technologist (ARRT); and

(E) Be certified in mammography by the ARRT or the equivalent; or

(F) Provide documented evidence that an ARRT mammography certification test is scheduled. Technologists meeting the requirements of subsection (1)(a) and paragraphs (1)(b)(A), (B), (C), and (D) of this rule may work under the supervision (supervision means that a fully qualified technologist is on-site and readily available to answer questions or assist) of a technologist, meeting all of the requirements of this rule, for up to one year while waiting to take the certification test.

(2) Interpreting Physician qualifications. All physicians interpreting mammograms shall meet MQSA qualifications and hold a current license to practice medicine in the State of Oregon.

(3) Medical Physicist qualifications. All Medical Physicists conducting surveys and equipment evaluations of mammography facilities and providing oversight of their quality assurance programs shall;

(a) Meet MQSA requirements; and

(b) Be currently licensed as a vendor by the Authority.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-116-0130

Records and Reports of Misadministrations

(1) For a misadministration that meets the definition in OAR 333-116-0020 a licensee must:

(a) Notify the Authority by telephone no later than the next calendar day after discovery of the misadministration and provide information as outlined in paragraphs (b)(A) through (b)(H) of this section.

NOTE: The 24-hour phone number of the Authority is (971) 673-0490.

(b) Submit a written report to the Authority within 15 days after the discovery of the misadministration. The written report must include:

(A) The licensee's name;

(B) The prescribing physician's name;

(C) A brief description of the event to include:

(i) Prescribed dose; and

(ii) Delivered dose.

(D) Why the event occurred;

(E) The effect on the patient;

(F) What improvements are needed to prevent recurrence;

(G) Actions taken to prevent recurrence; and

(H) Certification that the licensee notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient" in this section), and if not, why not, and if the patient was notified, what information was provided to the patient. The report must not include the patient's name or other information that could lead to identification of the patient.

(c) The licensee must notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative or guardian would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee must notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee must not delay medical care for the patient because of this.

(d) If the patient was notified, the licensee also must furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either:

(A) A copy of the report that was submitted to the Authority; or

(B) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the Authority can be obtained from the licensee.

(2) Each licensee must retain a record of each misadministration in accordance with OAR 333-100-0057. The record must contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(3) Aside from the notification requirement, nothing in this rule must affect any rights or duties of licensees and physicians in relation to each other, patients or responsible relatives or guardians.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-116-0190

Authorization for Calibration and Reference Source

Any person authorized by OAR 333-116-0030 for medical use of radioactive material may receive, possess and use the following radioactive material for check, calibration and reference use:

(1) Sealed sources manufactured and distributed by persons specifically licensed pursuant to OAR 333-102-0290 or equivalent provisions of the U.S. Nuclear Regulatory Commission (NRC) Agreement State or Licensing State and that do not exceed 1.11GBq (30 mCi) each;

(2) Any radioactive material listed in OAR 333-116-0300, 333-116-0320 or 333-116-0360 with a half-life of 100 days or less in individual amounts not to exceed 1.11GBq (30 mCi), except Y-90 sources not to exceed 2.8 GBq (75 mCi);

(3) Any radioactive material listed in OAR 333-116-0300, 333-116-0320 or 333-116-0360 with a half-life greater than 100 days in individual amounts not to exceed 7.4 MBq (200 uCi) each; and

(4) Technetium-99m in amounts as needed.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 24-2014, f. & cert. ef. 8-15-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0010

Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

(3) "Employee" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer and includes any individual who is required to have workers' compensation coverage.

(4) "EPA" means the U.S. Environmental Protection Agency.

(5) "FDA" means the U.S. Food and Drug Administration.

(6) "Fitzpatrick Skin Type Scale" means a numerical classification diagram used as a way to classify the response of different types of skin to ultraviolet (UV) light.

(7) "Formal Training" means a course of instruction reviewed and approved by the Authority and which is conducted or presented under formal classroom conditions or online by a qualified expert possessing adequate knowledge and experience to offer a curriculum, associated training, and certification testing pertaining to and associated with the correct use of tanning equipment. Operator training shall cover ultraviolet radiation and effects on the skin, photosensitivity, FDA and State of Oregon regulations, eye protection, and equipment maintenance.

(8) "Handrails" means a suitable physical aid that will help to maintain proper exposure distance.

(9) "Identification" means:

(a) A government-issued photo identification that displays the individual's date of birth; or

(b) A government or non-government issued photo identification when submitted with a completed Oregon Underage Tanning Medical Recommendation form.

(10) "Individual" means any human being.

(11) "Minor" means any individual under the age of 18 years old.

(12) "Operator" means the person who is an employee (defined by the Oregon Occupational Safety and Health Division, OAR 437-003-0011(2)) or contractor of the tanning facility who has received a certificate from an approved formal training course and who is responsible for any of the following:

(a) Determining customer's skin type;

(b) Determining the suitability for use of a tanning device;

(c) Providing information regarding the dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;

(d) Assuring that all required forms are understood and properly signed by the customer;

(e) Maintaining required exposure records;

(f) Recognizing and reporting injuries or alleged injuries to the registrant;

(g) Determining the customer's exposure schedule;

(h) Setting timers which control the duration of exposure;

(i) Instructing the customer in the proper use of protective eyewear;

(j) Verifying and documenting age of clients; and

(k) Sanitizing tanning devices.

(13) "Other Compensation" means the payment or exchange of goods, services or anything of value for use of the tanning device or devices.

(14) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

(15) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease or illness.

(16) "Program" means the Radiation Protection Services section of the Public Health Division.

(17) "Protective Eyewear" means suitable eyewear that protects the eye from ultraviolet radiation and allows adequate vision.

(18) "Public Places" means the area where members of the public may assemble and are not directly affected by tanning operations.

(19) "Recommendation" means a written directive using a form provided by the Authority and signed by a licensed physician.

(20) "Registrant" means a tanning facility registered with the Authority as required by provisions of this division.

(21) "Registration" means registration with the Authority in accordance with provisions of this division.

(22) "Remote" means a timer that is placed away from the tanning device so it can only be programmed by the tanning operator.

(23) "Safe Level" means not more than 50 colonies of microorganisms per four square inches of equipment surface.

(24) "Sanitize" means the effective bactericidal treatment of surfaces of equipment and devices by an EPA or FDA registered product that provides a sufficient concentration of chemicals, and enough time to reduce the bacterial count, including pathogens, to a safe level.

(25) Skin Types:

(a) "Type 1" means skin burns easily and severely (painful burn); tans little or none and peels.

(b) "Type 2" means skin burns easily and severely (painful burn); tans minimally or lightly and also peels.

(c) "Type 3" means skin burns moderately and tans about average.

(d) "Type 4" means skin burns minimally, tans easily and above average with each exposure; exhibits immediate pigment darkening reaction.

(e) "Type 5" means skin rarely burns, tans easily and substantial; always exhibits immediate pigment darkening reaction

(26) "Storage" means when a tanning device is not actively being used, as evidenced by the removal of all tanning lamps and lack of connection to a power supply.

(27) "Tanning Device" means any equipment used for tanning of the skin, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers including, but not limited to, a sunlamp, Ultraviolet Lamp, tanning booth, facial unit, UVA wand, or tanning bed. "Tanning device" also means any accompanying equipment, including, but not limited to, protective eyewear, timers, ballasts, starters, lamps, reflectors, cooling fans, acrylics, comfort pillows and handrails.

(28) "Tanning Facility" means any location, place, area, structure, or business that provides persons access to any tanning device.

(29) "Timer" means an electronic device designed specifically to terminate tanning sessions at a preset time interval.

(30) "Ultraviolet Radiation" means radiation that has a wavelength between two hundred nanometers and four hundred nanometers.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0020
Registration

(1) Prior to the operation of any tanning device used by the public for a fee or other compensation, the owner or operator shall file an application with the Authority and pay applicable fee(s) in the amount and in the manner specified in OAR 333-103-0025 to register each tanning device.

(2) If the owner or operator owns or operates more than one such tanning facility, the owner or operator shall file a separate application for each such facility owned or operated.

(3) Registration application shall be made on forms furnished by the Authority.

(4) A validation certificate or acknowledgement of validation will be issued by the Authority.

(5) The certificate issued by the Authority shall be effective for one year beginning January 1 through December 31.

(6) The certificate shall be displayed in a conspicuous open public area of the tanning facility.

(7) The Authority will provide an identification number that will be affixed by an Authority inspector to each tanning device during the initial or follow-up facility inspection:

(a) Identification numbers shall not be removed without written permission of the Authority; and

(b) Identification numbers shall not be defaced.

(8) The registrant shall notify the Authority in writing before making any change that would render the information contained in the application for registration or the validation of registration no longer accurate.

(9) No registration may be transferred from one person to another person, from one tanning facility to another tanning facility, or from one tanning device to another tanning device.

(10) Failure to properly register a tanning device is subject to the imposition of a civil penalty per ORS 431.950 and ORS 431.262.

(11) The Authority may require tanning facility registrants to complete and update application forms and information concerning tanning devices.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0030
Administrative Responsibilities

(1) The registrant shall be responsible for directing the operation of the tanning facility that has been registered with the Authority. That individual or individual's agent shall assure that the provisions of these rules are met in the operation of tanning devices.

(2) A tanning device which does not meet the provisions of these rules shall not be operated and may be tagged "Out of Service for Non-compliance with OAR 333-119 Requirements" by Authority inspectors. Devices tagged as non-compliant shall not be operated until written authorization is received by the registrant from the Authority.

(3) The registrant shall assure that the tanning facility will comply with all applicable federal laws and regulations.

(4) In addition to the requirements of this division, all registrants are subject to the applicable requirements of divisions 100, 103 and 111 of this chapter.

(5) The Authority Inspection Findings report shall be conspicuously posted in public view until all items of non-compliance have been corrected and a written Authority release from this requirement is received by the registrant.

(6) The registrant shall post in a conspicuous place the Authority "Notice To The Public".

(7) The registrant shall ensure that the "Warning", "Notice to the Public" and "Persons Under Age 18" signs are not covered or obscured, and are easily seen by clients at either the main reception area of the establishment or in each tanning device room.

(8) The registrant shall notify the Authority of any injury for which medical attention was sought or obtained from the use of a registered tanning device within one working day after learning of the occurrence, and provide the Authority any information about the incident the Authority deems necessary.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930 & 431.935
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0040
Construction and Operation of Tanning Facilities

Unless otherwise ordered or approved by the Authority, each tanning facility shall be constructed, operated and maintained to meet the following minimum requirements:

(1) All tanning facilities shall be equipped with convenient toilet facilities and dressing rooms. Such toilet facilities shall include a toilet and hand washing sinks. Such toilet and dressing rooms shall be properly maintained, as well as meet all state and local codes.

(2) Rooms or other enclosures containing tanning devices shall be maintained below 100 degrees Fahrenheit (38 degrees Centigrade) during operation.

(3) Tanning facilities shall be constructed, operated and maintained in accordance with applicable city, county and state codes.

(4) Clean sanitary towels shall be provided to all patrons using tanning facilities.

(5) A hamper or receptacle must be provided for all soiled towels and linen.

(6) No pets or animals are permitted in tanning facilities other than service animals.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2013, f. & cert. ef. 1-29-13; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0041
Cleaning and Sanitation

(1) All areas of the tanning facility, including tanning devices, equipment and apparatus, shall be maintained in a clean and sanitary manner by the facility operator.

(2) The tanning device(s) and protective eyewear shall be sanitized after each client use, by the facility operator.

(3) A clean paper or cloth towel shall be used each time the tanning device is sanitized.

(4) An operator cannot require the consumer to sanitize the tanning equipment or protective eyewear and shall not post any signs requesting such sanitation be performed by the consumer.

(5) The sanitizer must contain a concentration of Quaternary Ammonium between 400ppm-800ppm.

(6) A test kit that accurately measures the concentration of the sanitizing solution in parts per million (ppm) shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and tested weekly thereafter to ensure sufficient strength remains within the sanitizing solution.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: PH 4-2013, f. & cert. ef. 1-29-13; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0050
Warning Statement

(1) At each customer's initial visit to a tanning facility, and at least annually thereafter, the customer shall be provided a written statement to review and sign, which warns the customer that:

(a) Not wearing appropriate protective eyewear may cause damage to the eyes; and

(b) Overexposure to the tanning process may cause burns; and

(c) Repeated exposure to the tanning process may cause skin cancer or premature aging of the skin or both; and

(d) Abnormal skin sensitivity or burning may result from the tanning process if the customer is also consuming or using certain foods, cosmetics or medications (such as tranquilizers, antibiotics, diuretics, blood pressure medication or birth control pills); and

(e) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device; and

(f) The frequency and duration of tanning sessions must not exceed tanning device manufacturer recommendations; and

(g) Frequent users should be regularly screened for skin cancer by a physician.

(2) An Authority approved tanning client card may be used to satisfy the requirement of section (1) of this rule.

(3) The warning language in the written statement must be in 14 point or larger font.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0060
Warning Sign

(1) The registrant shall conspicuously post the warning sign described in section (2) of this rule within one meter (39.37 inches) of each tanning device and in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment or other object, and can be easily viewed by the customer before operating the tanning device.

(2) The warning sign in section (1) of this rule shall meet the following requirements:

(a) The sign shall be printed on paper or similar material no smaller than 8.5 inches by 11 inches. Signs are available for printing on the Authority's website.

(b) The major sign heading shall be labeled "DANGER" and the section entitled "FAILURE" shall be a minimum of Times New Roman, bold with a minimum font size of 40.

(c) The body text shall be a minimum of Times New Roman with a minimum font size of 20.

DANGER — ULTRAVIOLET RADIATION
Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and/or skin cancer.
Frequent users should be regularly screened for skin cancer.
FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.
Medications or cosmetics may increase your sensitivity to the Ultraviolet radiation. Consult a physician before using sunlamp or tanning device if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.
If you do not tan in the sun, you are unlikely to tan from the use of this product.
Tanning session frequency and time shall not exceed the device manufacturer's recommendations.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 20-2010, f. & cert. ef. 9-1-10; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0070
Protective Eyewear

(1) The registrant shall make available protective eyewear for use during tanning sessions.

(2) The protective eyewear in section (1) of this rule shall meet the requirements of 21 Code of Federal Regulations (CFR) Part 1040, Section 1040.20(c)(4).

(3) Tanning facility operators shall ensure, before each tanning session, that clients have approved protective eyewear.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0080
Training of Personnel

(1) The registrant shall ensure that tanning devices are operated only while an adequately trained operator is present at the tanning facility.

(2) All operators of registered tanning devices must successfully complete an Authority approved tanning training course prior to commencement of tanning operations.

(3) Approved training will include, at a minimum, content covering the rules of this division, skin typing, recognition of overexposure, as well as any other topic determined by the Authority to be critical to client protection.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 4-2013, f. & cert. ef. 1-29-13; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0090
Protection of Consumers

The registrant and operators are responsible for protecting the customers from overexposure to Ultraviolet Light by ensuring that:

(1) Only one customer may occupy the tanning room. In the case of a customer using a tanning device who may need the aid or assistance from another person, that individual must also be provided with and wear protective eyewear.

(2) No customer under the age of 18 years shall be allowed to use a tanning device without a completed Oregon Underage Tanning Medical Recommendation form completed by a licensed physician and identification. The recommendation:

(a) Must identify the physician and client and describe the recommended tanning session frequency(s) and duration(s);

(b) Must identify dates for starting and ending of the tanning sessions; and

(c) Cannot exceed the exposure scheduled per OAR 333-119-0100(14)(b).

(3) A sign shall be posted in conspicuous view at or near the reception area with the following text in a minimum of at least 36 point type:

"PERSONS UNDER AGE 18 ARE NOT ALLOWED TO USE A TANNING DEVICE WITHOUT A WRITTEN RECOMMENDATION FROM A LICENSED PHYSICIAN"

(4) Each person using a tanning device shall be instructed by the operator on the maximum exposure time and proper exposure distance, as recommended by the manufacturer of the device. The operator shall also instruct the customer as to the location and proper operation of the tanning device's emergency shut off switch.

(5) Infants and minors are not permitted to be in the tanning device room during exposure by parents or guardians.

(6) Tanning operators shall limit exposure time to the device manufacturer's recommendations. The maximum exposure time recommended by the manufacturer of the device shall not be exceeded in any 24-hour period.

(7) A copy of the manufacturer's recommended exposure schedule shall be maintained at the remote timer controls for each device.

(8) At the time of their initial visit, all clients shall have their skin type determined according to the Fitzpatrick Skin Type Scale, and their skin type recorded in the client record.

(9) Tanning operators shall maintain a list of the common photosensitizing agents as provided by the Public Health Division, FDA, or other appropriate authorities, available for review by customers.

(10) Tanning facilities are prohibited from controlling the use of tanning devices solely with token timer systems or a mechanical timer system.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0100
Equipment

(1) The registrant shall use only tanning devices manufactured in accordance with the specifications set forth in 21 CFR Part 1040, Section 1040.20, "Sunlamp Products and Ultraviolet Lamps Intended for Use in Sunlamp Products."

(2) Each tanning device shall be labeled in accordance with 21 CFR Part 1040.

(3) Adequate means shall be provided to enable a customer to summon assistance from the exposure position.

(4) All persons hired for servicing and repair of tanning devices shall be State of Oregon licensed electricians.

(5) State of Oregon electrical codes must be observed during service and repair actions.

(6) Replacement lamps shall be certified by the manufacturer as equivalent to the original lamp type as specified by the manufacturer, or certified as an equivalent lamp per 21 CFR 1040.20.

(7) If equivalent lamps are used instead of the Original Equipment Manufacturer (OEM) required lamps, a copy of the equivalency certification, provided by the lamp supplier, shall be maintained for review by the Authority during inspections.

(8) Lamps removed from a tanning device shall be disposed of in a safe and proper manner to prevent unauthorized and unsafe use as lighting devices. Used tanning lamps are prohibited from being resold for any purpose.

(9) If the ultraviolet tanning device is not in an individual cubicle, then a suitable screen, curtain, or other shield shall be provided, maintained, and used to prevent unnecessary exposure to ultraviolet radiation of persons not using the device.

(10) Each tanning device shall have a timer that complies with the requirements of 21 CFR Part 1040, Section 1040.20 (c)(2).

(11) The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time, or 20 minutes, whichever is less.

(12) A tanning facility shall use the following exposure schedule for tanning devices originally designed with a 30 minute maximum exposure time that have been reduced to a 20 minute maximum exposure time. A copy of this exposure schedule must be affixed to the tanning device, and a copy maintained at the timer controls.

(a) Skin type 1:
(A) Week 1: 1–3 minutes;
(B) Week 2: 4–6 minutes;
(C) Week 3: 7–10 minutes;
(D) Week 4: 11–15 minutes.
(b) Skin type 2 and 3:
(A) Week 1: 4 minutes;
(B) Week 2: 8 minutes;
(C) Week 3: 12 minutes;
(D) Week 4: 16 minutes;
(E) Weekly maintenance: 20 minutes.
(c) Skin Type 4 and 5:
(A) Week 1: 4 minutes;
(B) Week 2: 12 minutes;
(C) Week 3: 16 minutes;
(D) Week 4: 20 minutes;
(E) Weekly maintenance: 20 minutes.

(13) Tanning device timers shall be controlled by a trained operator. A remote timer control system shall be used for this purpose.

(14) Each tanning device shall be equipped with a functional emergency shut-off mechanism to allow manual termination of the UV exposure by the customer, as required by 21 CFR 1040.20(c)(3).

(15) Each timer must be functional and accurate to within ± 10 percent.

(16) The registrant shall ensure that the timer is checked annually for accuracy and the results recorded.

(17) The registrant shall ensure that the emergency shut-off is tested annually for proper function and results recorded.

(18) All tanning devices shall be maintained to the minimum requirements of the manufacturer.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.655, 431.930 & 431.945
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0110
Records and Reports

(1) The registrant shall maintain a record of each customer's total number of tanning visits, dates and durations of tanning exposures.

(2) The registrants shall maintain a record of each customer's signature and acknowledgement that they understand the potential risks involved with exposure to ultraviolet radiation and overexposure, and that they have reviewed a photosensitizing drug list.

(3) The registrant shall maintain and have available when requested by the Authority, all completed Oregon Underage Tanning Medical Recommendation forms with copies of the identification used for each minor allowed to use a tanning device.

(4) Upon their initial visit, all tanning clients must present acceptable identification as proof of age. The type of identification, identification number, client's name, and date of birth shall be recorded by the registrant in the client's record. When requested by the Authority, records shall be available for review.

(5) The registrant shall maintain a record of operator training as required in OAR 333-119-0080(3).

(6) The registrant shall maintain a copy of the owner's manual for each tanning device.

(7) Records shall be maintained showing the method of disposal of all tanning devices and lamps.

(8) All required records shall be maintained in a location and format as to be readily available for review during inspections conducted by the Authority.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0120
Advertising

(1) Registrants shall not claim or distribute promotional materials that claim using a tanning device is safe, free from risk or that using the device will result in medical or health benefits. Only cosmetic claims can be promoted.

(2) No person, in any advertisement, shall refer to the fact that such person, or such person's facility is registered with the Authority pursuant to the provisions of this division, and no person shall state or imply that any activity under such registration has been approved by the Authority.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 20-2010, f. & cert. ef. 9-1-10; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-119-0130
Exemptions

(1) The Authority may, upon application therefore or upon its own initiative, grant such exemptions or exceptions from the requirements of the

rules in this section as it determines are authorized by law and will not result in undue hazard to public health and safety.

(2) A phototherapy device used by or under the direct supervision of a physician licensed under ORS chapter 677 is exempt from the requirements of this division.

(3) Any individual is exempt from the provisions of this division to the extent that such individual owns a tanning device exclusively for personal use.

(4) Tanning devices, while in transit or storage, are exempt from the registration provisions of this division.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-120-0200
General

(1) Each licensee or registrant must make or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with the rules in this division; and

(b) Are reasonable under the circumstances to evaluate:

(A) The magnitude and extent of radiation levels; and

(B) The concentrations or quantities of radioactive material; and

(C) The potential radiological hazards that could be present.

(2) Notwithstanding OAR 333-120-0620, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning. Records must be retained in accordance with 10 CFR parts 30.35(g), 40.36(f), and 70.25

(3) The licensee or registrant must ensure that instruments and equipment used for quantitative radiation measurements (such as dose rate and effluent monitoring) are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable division or a license condition.

(4) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees or registrants to comply with OAR 333-120-0100, with other applicable provisions of this division or with conditions specified in a license must be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(5) The licensee or registrant must ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-120-0670
Records of Waste Disposal

(1) Each licensee shall maintain records of the disposal of licensed materials made under OAR 333-120-0510, 333-120-0520, 333-120-0530, 333-120-0540, 10 CFR Part 61, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee shall maintain the records required by section (1) of this rule until the Authority terminates each pertinent license requiring the record. Requirements for disposition of these records, prior to license termination are located in OAR 333-100-0055, 333-102-0355 and 10 CFR Part 72.80 for licensed activities.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-121-0001
Purpose and Scope

(1) This division contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive material in irradiators used to irradiate objects or materials using gamma radiation. This division also contains radiation safety requirements for operating irradiators. The requirements of this division are in addition to other requirements of these regulations. In particular, the provisions of divisions 100, 102, 120, and 111 of chapter 333 apply to applications and licenses subject to this division. Nothing in this division relieves the licensee from complying with other applicable federal, state and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

(2) The regulations in this division apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to underwater irradiators in which both the source and the product being irradiated are under water. Irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type, are covered by this division.

(3) The regulations in this division do not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel; medical radiology or teletherapy; radiography for the irradiation of materials for nondestructive testing purposes; gauging; or open-field, agricultural, irradiations.

Stat. Auth.: ORS 453.675
Stats. Implemented: ORS 453.675
Hist.: PH 5-2005, f. & cert. ef. 4-11-05; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-121-0010
Definitions

(1) "Annually" means at intervals not to exceed one year.

(2) "Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to the regulations in this division that has a reasonable nexus to radiological health and safety.

(3) "Construction" means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this division that are related to radiological safety or security. The term "construction" does not include:

(a) Changes for temporary use of the land for public recreational purposes;

(b) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this division;

(e) Excavation;

(f) Erection of support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(g) Building of service facilities (such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(h) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) Taking any other action that has no reasonable nexus to radiological health and safety.

(4) "Doubly encapsulated sealed source" means a sealed source in which the radioactive material is sealed within an inner capsule and that capsule is sealed within an outer capsule.

(5) "Irradiator" means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding 5 grays (500 rads) per hour exist at 1 meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area

subject to irradiation are contained within a device and are not accessible to personnel.

(6) "Irradiator operator" means an individual who has successfully completed the training and testing described in OAR 333-121-0300 and is authorized by the terms of the license to operate the irradiator without a supervisor present.

(7) "Irradiator operator supervisor" means an individual who meets the requirements for an irradiator operator and who physically oversees operation of the irradiator by an individual who is currently receiving training and testing described in OAR 333-121-0300.

(8) "Panoramic dry-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

(9) "Panoramic irradiator" means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

(10) "Panoramic wet-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

(11) "Pool irradiator" means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

(12) "Product conveyor system" means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

(13) "Radiation room" means a shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

(14) "Sealed source" means any radioactive material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

(15) "Seismic area" means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the US Geological Survey.

(16) "Underwater irradiator" means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

Stat. Auth.: ORS 453.675
Stats. Implemented: ORS 453.675
Hist.: PH 5-2005, f. & cert. ef. 4-11-05; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-121-0020
Application for a Specific License

(1) Applications for specific licenses shall be filed on a form prescribed by the Authority and satisfy the general requirements specified in OAR 333-102-0200.

(2) The Authority may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Authority to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Authority provided such references are clear and specific.

(6) Applications and documents submitted to the Authority may be made available for public inspection except that the Authority may withhold any document or part thereof from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

Stat. Auth.: ORS 453.605 – 453.807
Stats. Implemented: ORS 453.605 – 453.807
Hist.: PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

333-122-0005
Definitions

As used in this division, the following definitions apply:

(1) "Annual refresher safety training" means a review conducted or provided by the registrant for its employees on radiation safety aspects of industrial X-ray. The review must include, as a minimum, a review of radiation safety aspects of industrial X-ray, any results of internal audits, Authority inspections, new procedures or equipment, new or revised regulations, and accidents or errors that have been observed. The review must also provide opportunities for employees to ask safety questions.

(2) "ANSI" means the American National Standards Institute.

(3) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet so shielded that every location on the exterior meets the dose limits for individual members of the public as specified in OAR 333-120-0180.

(4) "Cabinet X-ray system" means an X-ray system with the X-ray tube installed in an enclosure, hereinafter termed a cabinet that is independent of existing architectural structures except the floor. The cabinet X-ray system is intended to contain at least that portion of a material being irradiated, provide radiation attenuation and exclude personnel from its interior during generation of radiation. This definition includes X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals and in similar facilities, and all X-ray systems designed primarily for the inspection of letters, periodicals and packages in mailrooms. An X-ray tube used within a shielded part of a building, or X-ray equipment that may temporarily or occasionally incorporate portable shielding, is not considered a cabinet X-ray system.

(5) "Certifiable cabinet X-ray system" means an existing uncertified X-ray system that has been modified to meet the certification requirements specified in 21 CFR 1020.40.

(6) "Certified cabinet X-ray system" means an X-ray system that has been certified in accordance with 21 CFR 1010.2 as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40.

(7) "Hands-on experience" means experience in all of those areas considered to be directly involved in the X-ray process, and includes taking radiographs, calibration of survey instruments, operational and performance testing of survey instruments and devices, film development, posting of radiation areas, set-up of X-ray equipment, and radiation surveys, as applicable. Trainees undergoing the "hands-on experience" must do so under the direct supervision of a qualified industrial X-ray machine operator.

(8) "Industrial X-ray" means a nondestructive examination of the structure of materials using an X-ray machine to make radiographic images.

(9) "Industrial X-ray instructor" means any industrial X-ray operator who has been authorized by the Authority to provide on-the-job training to industrial X-ray trainees in accordance with OAR 333-122-0200.

(10) "Industrial X-ray trainee" means any individual who, under the direct supervision of an industrial X-ray instructor, uses industrial X-ray machines, related handling tools or radiation survey instruments during the course of his instruction.

(11) "Industrial X-ray operations" means all activities performed with an industrial X-ray machine. Activities include using, setting up equipment, and any activity inside restricted area boundaries.

(12) "Industrial X-ray personnel" means any X-ray operator, X-ray instructor or X-ray trainee.

(13) "Permanent X-ray installation" means an enclosed shielded room, cell, or vault in which industrial X-ray is performed.

(14) "Personal supervision" means supervision in which the X-ray operator is physically present at the site where X-ray machines and associated equipment are being used, watching the performance of the X-ray operator's assistant and in such proximity that immediate assistance can be given if required.

(15) "Practical examination" means a demonstration through application of the safety rules and principles in industrial X-ray including use of all procedures and equipment to be used by industrial X-ray personnel.

(16) "Radiation safety officer for industrial X-ray" means an individual with the responsibility for the overall radiation safety program on behalf of the registrant and who meets the requirements of OAR 333-122-0175.

(17) "Shielded room X-ray using X-ray machines" means an enclosed room or vault in which industrial X-ray is performed the interior of which is not occupied during X-ray operations. The room must be so shielded that every location on the exterior meets conditions for an unrestricted area as specified in OAR 333-120-0180, and the only access is through openings that are interlocked so that the X-ray machine will not operate unless all openings are securely closed.

(18) "X-ray Operator" means any individual who handles, adjusts technique factors, activates the exposure switch or button on an industrial X-ray machine and is qualified under OAR 333-122-0200.

(19) "X-ray operator's assistant" means any individual who, under the direct supervision of an industrial X-ray operator, uses radiographic X-ray machines, related handling tools or radiation survey instruments in industrial X-ray.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807
Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15

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Rule Caption: Preventing transmission of disease by exclusion of susceptible persons from school and child care
Adm. Order No.: PH 1-2015(Temp)
Filed with Sec. of State: 1-7-2015
Certified to be Effective: 1-7-15 thru 7-5-15
Notice Publication Date:
Rules Amended: 333-019-0010
Subject: The Oregon Health Authority, Public Health Division, Acute and Communicable Disease Prevention section is temporarily amending OAR 333-019-0010 pertaining to control of communicable diseases through disease-related school, child care and worksite restrictions. These rules need to be adopted promptly so that public health measures may be taken to stem an ongoing outbreak of chickenpox.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-019-0010
Imposition of Restrictions

(1) For purposes of this rule "restrictable disease":

(a) As applied to food service facilities includes but is not limited to diphtheria, measles, Salmonella enterica serotype Typhi infection, shigellosis, Shiga-toxigenic Escherichia coli (STEC) infection, hepatitis A, tuberculosis, open or draining skin lesions infected with Staphylococcus aureus or Streptococcus pyogenes, and any illness accompanied by diarrhea or vomiting.

(b) As applied to schools, child care, and health care facilities, includes but is not limited to chickenpox, mumps, pertussis, rubella, and scabies and may include a communicable stage of hepatitis B infection if, in the opinion of the local health officer, the child poses an unusually high risk to other children (for example, exhibits uncontrollable biting or spitting).

(2) To protect the public health, persons who attend or work at schools or child care facilities or who work at health care facilities or food service facilities shall not attend or work at these facilities whilst in a communicable stage of any restrictable diseases unless authorized to do so as hereunder specified.

(3) At the discretion of local school authorities or the local public health authority, pediculosis may be considered a school-restrictable condition.

(4) A child or employee in any school or children's facility who has been exposed to a restrictable disease must be excluded by the administrator, as that term is defined in ORS 433.235, unless the local health officer determines, in accordance with section (5) of this rule, that exclusion is not necessary to protect the public's health.

(5) An administrator may request that the local health officer determine whether an exclusion under section (4) of this rule is necessary. In making such a determination the local health officer may, in consultation as needed with the Authority, consider factors including but not limited to the following:

(a) The severity of the disease;

(b) The means of transmission of the disease;

(c) The intensity of the child's or employee's exposure; and

(d) The exposed child's or employee's susceptibility to the disease, as indicated by:

(A) A previous occurrence of the disease;

(B) Vaccination records;

(C) Evidence of immunity as indicated by laboratory testing;

(D) Year of birth; or

(E) History of geographic residence and the prevalence of the disease in those areas.

(6) The length of exclusion under section (4) of this rule is one incubation period following the child or employee's most recent exposure to the disease.

(7) A child or employee may be excluded under this rule notwithstanding any claim of exemption under ORS 433.267(1).

(8) Nothing in these rules prohibits the adoption of more stringent rules regarding exclusion from schools or child care facilities. Such additional restrictions shall require formal certification that the disease or condition in question presents a significant public health risk in that setting. For schools, this action may be taken by the local public health authority or the local school governing body. For child care facilities, this action may be taken by the local public health authority.

(9) The infection control committee at all health care facilities shall adopt policies to restrict the work of employees with restrictable diseases in accordance with recognized principles of infection control. Nothing in these rules prohibits health care facilities or the local public health authority from adopting additional or more stringent rules for exclusion from these facilities.

Stat. Auth.: ORS 413.042, 431.110, 433.004, 433.255, 433.260, 433.329, 433.332, 616.750, & 624.005
Stats. Implemented: ORS 433.255, 433.260, 433.407, 433.411 & 433.419
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; OHD 4-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14; PH 1-2015(Temp), f. & cert. ef. 1-7-15 thru 7-5-15

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Oregon Medical Board
Chapter 847

Rule Caption: Volunteer Emeritus licensure qualifications and application requirements
Adm. Order No.: OMB 1-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-13-15
Notice Publication Date: 11-1-2014
Rules Amended: 847-023-0005, 847-023-0010, 847-023-0015
Subject: The rule amendments reference the complete list of acceptable licensing examinations or combination of examinations; allow applicants with ongoing maintenance of certification to request a SPEX/COMVEX waiver; require documents in a foreign language to be submitted with an official translation; remove references to a paper application form; revise the requirements for a photograph so that it may be submitted digitally; include fingerprints within the rule on documents to be submitted for licensure; clarify that the Board may ask for additional documents regarding information received during the processing of the application; include the ECFMG certificate among the documents that must be sent to the Board; and add rules on application withdrawals and denials.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-023-0005
Qualifications

(1) The Board may issue a volunteer emeritus license to a physician who volunteers at a health clinic provided that the physician:

(a) Has a current license to practice medicine in another state or territory of the United States or the District of Columbia; and

(b) Has successfully passed one of the examinations or combination of examinations per OAR 847-020-0170.

(2) A physician applying for a license to volunteer in health clinics who has not practiced medicine for more than twenty-four (24) months immediately prior to filing the application for licensure with the Board, may be required to take and pass the Special Purpose Examination (SPEX) or Comprehensive Osteopathic Medical Variable-Purpose Examination (COMVEX). This requirement may be waived if the applicant has done one or more of the following:

(a) Within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved one year clinical fellowship;

(b) Within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA-BOS);

(c) Obtained continuing medical education to the Board's satisfaction; or

(d) Can demonstrate ongoing participation in maintenance of certification with the ABMS or AOA-BOS.

(3) The Limited License, SPEX/COMVEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the SPEX or COMVEX examination are available and the applicant completes the initial registration process. The Limited License, SPEX/COMVEX would become invalid should the applicant fail the SPEX or COMVEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

Stat. Auth.: ORS 677.120 & 677.265
Stats. Implemented: ORS 677.120 & 677.265

Hist.: BME 16-2006, f. & cert. ef. 7-25-06; BME 5-2008, f. & cert. ef. 1-22-08; OMB 1-2015, f. & cert. ef. 1-13-15

847-023-0010
Documents and Forms to be Submitted for Licensure

The documents submitted must be legible and no larger than 8 1/2" x 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 1/2" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. Official translations are required for documents issued in a foreign language. The following documents are required:

(1) Application: Completed formal application provided by the Board. Required dates must include month, day and year. The application fee is waived for physicians applying for a volunteer emeritus license.

(2) Birth Certificate: A copy of birth certificate.

(3) Medical School Diploma: A copy of a diploma showing graduation from an approved school of medicine or an international school of medicine. International medical graduates must have graduated after meeting the attendance requirements specified in OAR 847-020-0130.

(4) American Specialty Board Certification or Recertification: A copy of the certification or recertification certificate issued by the American Specialty Board in the applicant's specialty, if applicable.

(5) Photograph: A close-up, passport-quality photograph, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application.

(6) The results of a Practitioner Self-Query from the National Practitioner Data Bank sent directly to the Board by the applicant.

(7) Legible fingerprints as described in 847-008-0068 for the purpose of a criminal records background check.

(8) An applicant must pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and an open-book examination on the Drug Enforcement Administration's regulations governing the use of controlled substances. If an applicant fails one or both examinations three times, the applicant's application will be reviewed by the Board's Administrative Affairs Committee and the applicant must attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination(s) before being given a fourth and final attempt to pass the examination(s). If the applicant does not pass the examination(s) on the fourth attempt, the applicant may be denied licensure.

(9) Any other documentation or explanatory statements as required by the Board.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.120 & 677.265
Hist.: BME 9-2007(Temp), f. & cert. ef. 2-6-07 thru 8-3-07; BME 16-2007, f. & cert. ef. 7-23-07; BME 7-2010, f. & cert. ef. 4-26-10; OMB 1-2015, f. & cert. ef. 1-13-15

847-023-0015
Letters and Official Verifications to be Submitted for Licensure

(1) The applicant must ensure that either official documents are sent directly to the Board from the source or a certified copy is sent directly to the Board from another state medical board where the applicant is licensed:

(a) The Verification of Medical Education form, which includes degree issued, date of degree, dates of attendance, dates and reason of any leaves of absence or repeated years, and dates, name and location of medical school if a transfer student. Graduates of medical schools in the United States must have graduated from a school per OAR 847-020-0120(1) and graduates of international medical schools must have graduated from a school per 847-020-0130(2).

(b) A Dean's Letter of Recommendation, which includes a statement concerning the applicant's moral and ethical character and overall performance as a medical student. If the school attests that a Dean's Letter is unavailable or the Board determines that it is unacceptable, a copy of the transcripts may be acceptable.

(c) A letter from the Fifth Pathway Hospital, if such applies, which includes an evaluation of overall performance and specific beginning and ending dates of training.

(d) A letter from the Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in the United States and other countries in which the postgraduate training was served, which includes an evaluation of overall performance and specific beginning and ending dates of training.

(2) The applicant must ensure that official documents are sent directly to the Board from:

(a) The Director or other official for practice and employment in hospitals, clinics, etc. in the United States and other countries: A currently dated original letter (a copy is not acceptable), from the hospital/clinic, which must include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. For physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.

(b) The health licensing board in a state, district, territory or jurisdiction in the United States or Canada where the applicant has been licensed and is currently practicing or most recently practiced: Verification, which must show license number, date issued and status.

(c) Official Examination Certifications: An official examination certification showing the examination score is required from the National Board of Medical Examiners (NBME), the National Board of Osteopathic Medical Examiners (NBOME), the Federation Licensing Examination (FLEX), the Federation of State Medical Boards for the United States Medical Licensing Examination (USMLE), or the Medical Council of Canada.

(d) The Federation of State Medical Boards: A Board Action Databank Inquiry report.

(e) The Educational Commission for Foreign Medical Graduates Verification of Certification.

(f) Any other documentation as required by the Board, including but not limited to medical records and criminal or civil records.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.120 & 677.265
Hist.: BME 9-2007(Temp), f. & cert. ef. 2-6-07 thru 8-3-07; BME 16-2007, f. & cert. ef. 7-23-07; BME 7-2010, f. & cert. ef. 4-26-10; OMB 1-2015, f. & cert. ef. 1-13-15

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Rule Caption: Qualifications for license by expedited endorsement
Adm. Order No.: OMB 2-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-13-15
Notice Publication Date: 11-1-2014
Rules Amended: 847-026-0000
Subject: The rule amendment clarifies that applicants who qualify for expedited endorsement must have one year of current, active, unrestricted practice in the United States or Canada immediately preceding the application for licensure. Practice in other countries for that period will not qualify due to the differences in medical regulation and potential difficulty in obtaining documents with primary source verification from international regulatory bodies.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-026-0000
Qualifications for License by Endorsement

(1) The Oregon Medical Board may issue a license by endorsement to a physician who:

(a) Meets the requirements for licensure as stated in OAR 847-020-0120, 847-020-0130, 847-020-0170, and 847-023-0005;

(b) Has not had privileges at a hospital, clinic, or surgical center denied, reduced, restricted, suspended, revoked, terminated and has not been subject to staff disciplinary action or non-renewal of an employment contract for reasons in the Board's judgment related to medical practice or unprofessional conduct, or been requested to voluntarily resign or had privileges suspended while under investigation;

(c) Is eligible for primary source verification of medical education, post-graduate training and examination scores through the state in which the applicant was originally licensed. The Board may use current certification by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists as a proxy for verification of medical education, post-graduate training and examination scores from the initial state of licensure;

(d) Is in good standing, with no restrictions or limitations upon, actions taken against, or investigation or disciplinary action pending against his/her license in any state, district, territory, or jurisdiction where applicant is or has been licensed;

(e) Has no significant malpractice claim patterns or patient care issues as determined by the Board;

(f) Has one (1) year of current, active, unrestricted, unlimited clinical practice in their medical specialty, if any, as a licensee of a state, district, territory, or jurisdiction in the United States or Canada in the year preceding the physician's submission to the Board of an application to practice in Oregon, or if retired must have been retired for no more than one (1) cal-

endar year preceding the physician's submission to the Board of an application to practice in Oregon. Clinical patient practice will be documented by verification of staff privileges, or non-consulting medical employment. A year of accredited clinical fellowship in the applicant's medical specialty as a licensee of a state, district, territory or jurisdiction in the United States or Canada qualifies as a year of clinical practice.

(2) A physician is not eligible for licensure by endorsement if the Board finds that the applicant has engaged in conduct prohibited by ORS 677.190.

(3) An applicant ineligible for licensure by endorsement may make a full and complete application per the requirements of OAR 847-020, or 847-023.

Stat. Auth.: ORS 677.133 & 677.265
Stats. Implemented: ORS 677.133 & 677.265
Hist.: BME 21-2009(Temp), f. & cert. ef. 10-23-09 thru 4-15-10; BME 4-2010, f. & cert. ef. 1-26-10; OMB 2-2015, f. & cert. ef. 1-13-15

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Rule Caption: Acupuncture mentors and clinical supervisors
Adm. Order No.: OMB 3-2015
Filed with Sec. of State: 1-13-2015
Certified to be Effective: 1-13-15
Notice Publication Date: 11-1-2014
Rules Amended: 847-070-0005, 847-070-0007, 847-070-0015, 847-070-0016, 847-070-0019, 847-070-0022, 847-070-0045
Subject: The rule amendments alphabetize the definitions, eliminate references to forms or printed photographs to reflect electronic submission of applications and required materials, renumber the subsections under the rule on qualifications for clarity, distinguish mentorships from clinical training by changing the terminology from "clinical supervisor" to "mentor" under the rules for demonstrating competency, and make general language and grammar housekeeping updates.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-070-0005
Definitions

As used in the rules regulating the practice of acupuncture:

(1)(a) "Acupuncture" means an Oriental health care practice used to promote health and to treat neurological, organic or functional disorders by the stimulation of specific points on the surface of the body by the insertion of needles. "Acupuncture" includes the treatment method of moxibustion, as well as the use of electrical, thermal, mechanical or magnetic devices, with or without needles, to stimulate acupuncture points and acupuncture meridians and to induce acupuncture anesthesia or analgesia.

(b) The practice of acupuncture also includes the following modalities as authorized by the Oregon Medical Board:

(A) Traditional and modern Oriental Medical and acupuncture techniques of diagnosis and evaluation;

(B) Oriental massage, exercise and related therapeutic methods; and

(C) The use of Oriental pharmacopoeia, vitamins, minerals and dietary advice.

(2) "Board" means the Oregon Medical Board for the State of Oregon.

(3) "Clinical training" means supervised clinical training which consists of diagnosis and actual patient treatment which includes insertion of acupuncture needles.

(4) "Committee" means the Acupuncture Advisory Committee.

(5) "Licensed Acupuncturist" means an individual authorized by the Board to practice acupuncture pursuant to ORS Chapter 677.

(6) "Physician" means an individual licensed to practice medicine pursuant to ORS Chapter 677.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.265, 677.757, 677.759 & 677.780
Hist.: ME 31, f. 9-9-75, ef. 10-11-75; ME 4-1979, f. & ef. 5-1-79; ME 2-1981, f. & ef. 2-3-81; ME 9-1982, f. & ef. 10-27-82; ME 6-1984, f. & ef. 1-20-84; ME 6-1993, f. & cert. ef. 4-22-93; ME 4-1995, f. & cert. ef. 5-3-95; BME 21-2008, f. & cert. ef. 7-21-08; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0007
Practice of Acupuncture

(1) No person may practice acupuncture without first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Oregon Medical Board.

(2) A physician who desires to be approved as a clinical supervisor must meet the requirements of OAR 847-070-0015.

Stat. Auth.: ORS 677.265 & 677.756 & 677.759
Stats. Implemented: ORS 677.759
Hist.: ME 6-1984, f. & ef. 1-20-84; ME 4-1995, f. & cert. ef. 5-3-95; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0015
Application

(1) Every applicant must satisfactorily complete an application and document evidence of qualifications listed in OAR 847-070-0016 to the satisfaction of the Board. Such application and documentation must be complete before an applicant may be considered eligible for licensure.

(2) False documentation is grounds for denial of licensure or disciplinary action by the Board.

(3) An applicant applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

(4) No applicant is entitled to licensure who:

(a) Has had his/her license or certificate revoked or suspended in this or any other state unless the said license or certificate has been restored or reinstated and the applicant's license or certificate is in good standing in the state which had revoked the same;

(b) Has been refused a license or certificate in any other state on any grounds other than failure in an acupuncture licensure examination; or

(c) Has been guilty of conduct similar to that which would be prohibited by or to which ORS 677.190 would apply.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.759
Hist.: ME 31, f. 9-9-75, ef. 10-11-75; ME 4-1979, f. & ef. 5-1-79; ME 2-1980, f. & ef. 1-30-80; ME 2-1981, f. & ef. 2-3-81; ME 9-1982, f. & ef. 10-27-82; ME 6-1984, f. & ef. 1-20-84; ME 1-1985, f. & ef. 1-21-85; ME 10-1985, f. & ef. 8-5-85; ME 13-1986, f. & ef. 7-31-86; ME 6-1987, f. & ef. 1-23-87; ME 19-1987(Temp), f. & ef. 8-7-87; ME 24-1987, f. & ef. 10-29-87; ME 8-1988, f. 6-10-88, cert. ef. 6-6-88; ME 22-1989, f. & cert. ef. 10-20-89; ME 3-1991(Temp), f. & cert. ef. 4-19-91; ME 8-1991, f. & cert. ef. 7-24-91; ME 1-1992, f. & cert. ef. 1-21-92; ME 6-1993, f. & cert. ef. 4-22-93; ME 7-1993(Temp), f. 4-22-93, cert. ef. 4-23-93; ME 11-1993, f. & cert. ef. 7-27-93; ME 6-1994, f. & cert. ef. 1-24-94; ME 4-1995, f. & cert. ef. 5-3-95; ME 11-1995, f. & cert. ef. 11-21-95; ME 5-1997, f. & cert. ef. 11-3-97; BME 5-1998, f. & cert. ef. 4-22-98; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0016
Qualifications

(1) An applicant for licensure as an acupuncturist must have:

(a) Graduated from an acupuncture program that satisfies the standards of the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), or its successor organization, or an equivalent accreditation body that are in effect at the time of the applicant's graduation. An acupuncture program may be established as having satisfied those standards by demonstration of one of the following:

(A) Accreditation, or candidacy for accreditation by ACAOM at the time of graduation from the acupuncture program; or

(B) Approval by a foreign government's Ministry of Education, or Ministry of Health, or equivalent foreign government agency at the time of graduation from the acupuncture program. Each applicant must submit their documents to a foreign credential equivalency service, which is approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) for the purpose of establishing equivalency to the ACAOM accreditation standard. Acupuncture programs that wish to be considered equivalent to an ACAOM accredited program must also meet the curricular requirements of ACAOM in effect at the time of graduation.

(b) Current certification in acupuncture by the NCCAOM. An applicant will be deemed certified by the NCCAOM in Acupuncture if the applicant has passed the NCCAOM Acupuncture Certification Examinations or has been certified through the NCCAOM Credentials Documentation Examination. The applicant has no more than four attempts to pass the NCCAOM Acupuncture Certification Examinations. If the applicant does not pass the NCCAOM Certification Examinations within four attempts, the applicant is not eligible for licensure.

(2) An applicant who does not meet the criteria in OAR 847-070-0016(1) must have the following qualifications:

(a) Five years of licensed clinical acupuncture practice in the United States. This practice must include a minimum of 500 acupuncture patient visits per year. Documentation must include:

(A) Two affidavits from office partners, clinic supervisors, accountants, or others approved by the Board, who have personal knowledge of the years of practice and number of patient visits per year; and

(B) Notarized copies of samples of appointment books, patient charts and financial records, or other documentation as required by the Board; and

(b) Practice as a licensed acupuncturist in the U.S. during five of the last seven years prior to application for Oregon licensure. Licensed practice includes clinical practice, clinical supervision, teaching, research, and other

work as approved by the Board within the field of acupuncture and oriental medicine. Documentation of this practice will be required and is subject to Board approval; and

(c) Successful completion of the ACAOM western medicine requirements in effect at the time of graduation from the acupuncture program, unless the applicant graduated from a non-accredited acupuncture program prior to 1989; and

(d) Current certification in acupuncture by the NCCAOM. An applicant will be deemed certified in Acupuncture by the NCCAOM if the applicant has passed the NCCAOM Acupuncture Certification Examinations or has been certified through the NCCAOM Credentials Documentation Examination. The applicant has no more than four attempts to pass the NCCAOM Acupuncture Certification Examinations. If the applicant does not pass the NCCAOM Certification Examinations within four attempts, the applicant is not eligible for licensure.

(3) An individual whose acupuncture training and diploma were obtained in a foreign country and who cannot document the requirements of subsections (1) or (2) of this rule because the required documentation is now unobtainable, may be considered eligible for licensure if it is established to the satisfaction of the Board that the applicant has equivalent skills and training and can document one year of training or supervised practice under a licensed acupuncturist in the United States.

(4) In addition to meeting the requirements in (1), (2) or (3) of this rule, all applicants for licensure must have the following qualifications:

(a) Licensure in good standing from the state or states of all prior and current health related licensure; and

(b) Have good moral character as those traits would relate to the applicant's ability properly engage in the practice of acupuncture; and

(c) Have the ability to communicate in the English language well enough to be understood by patients and physicians. This requirement is met if the applicant passes the NCCAOM written acupuncture examination in English, or if in a foreign language, must also have passed an English language proficiency examination, such as TOEFL (Test of English as a Foreign Language), or TSE (Test of Spoken English). An applicant must obtain a TOEFL score of 500 or more for the written TOEFL exam and 173 or more for the computer based TOEFL exam, or a TSE score of 200 or more prior to July 1995, and a score of 50 or more after July 1995. An applicant who is certified through the NCCAOM Credentials Documentation Examination must also have passed an English proficiency examination.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.265, 677.759 & 677.780
Hist.: ME 5-1997, f. & cert. ef. 11-3-97; BME 5-1998, f. & cert. ef. 4-22-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 16-1999, f. & cert. ef. 10-28-99; BME 13-2001, f. & cert. ef. 10-30-01; BME 6-2002, f. & cert. ef. 4-23-02; BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06; BME 10-2007, f. & cert. ef. 4-26-07; BME 7-2008(Temp), f. & cert. ef. 4-24-08 thru 10-6-08; BME 21-2008, f. & cert. ef. 7-21-08; BME 14-2009, f. & cert. ef. 7-20-09; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0019
Interview and Examination

(1) In addition to all other requirements for licensure, the Board may require an applicant to appear for a personal interview regarding information received in the application process. Unless excused in advance, failure to appear before a Committee of the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

(2) If there is reasonable cause to question the qualifications of an applicant, the Board in its discretion may require the applicant to do one or more of the following:

(a) Obtain certification or re-certification in Acupuncture or Oriental Medicine by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);

(b) Pass an evaluation which may be written, oral, practical, or any combination thereof;

(c) Provide documentation of current NCCAOM Acupuncture certification;

(d) Complete 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice prior to application for Oregon licensure. Continuing education that meets NCCAOM's recertification requirements would qualify as Board-approved continuing education;

(e) Complete a mentorship of at least 20 hours under a Board-approved mentor who must individually supervise the applicant. The mentor must report the successful completion of the mentorship to the Board.

(3) An applicant must pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR chapter 847, division 70).

Stat. Auth.: ORS 677.265, 677.759
Stats. Implemented: ORS 677.175 & 677.759
Hist.: BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06; BME 5-2009, f. & cert. ef. 1-22-09; OMB 8-2014, f. & cert. ef. 1-14-14; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0022
Documents to be Submitted for Licensure

The documents submitted must be legible and no larger than 8 ½" x 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 ½" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. Official translations are required for documents issued in a foreign language. The following documents are required:

(1) Application: Completed formal application provided by the Board. Required dates must include month, day and year.

(2) Birth Certificate: A copy of birth certificate and a copy of Change of Name documentation, Marriage Certificate, or Divorce Decree if the applicant's name has been changed by court order, adoption, marriage, divorce, etc.

(3) Acupuncture School Diploma: A copy of a diploma showing graduation from an approved school of acupuncture for those applicants who qualify under OAR 847-070-0016(1).

(4) Photograph: A close-up, passport-quality photograph, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application.

(5) A letter from the Dean of the applicant's program of acupuncture for those applicants who qualify under OAR 847-070-0016(1).

(6) A letter from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) verifying current certification in acupuncture by the NCCAOM for those applicants who qualify under OAR 847-070-0016(1) or (2).

(7) A letter verifying licensure in good standing from the state or states of all prior and current health-related licensure.

(8) A letter from the Director or other official for practice and employment to include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. For acupuncturists who have been or are in solo practice, three reference letters from acupuncturists in the local treatment community who are familiar with the applicant's practice and who have known the applicant for more than six months.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.275 & 677.759
Hist.: BME 21-2006, f. & cert. ef. 10-23-06; BME 19-2007, f. & cert. ef. 10-24-07; OMB 3-2015, f. & cert. ef. 1-13-15

847-070-0045
Inactive Registration and Re-Entry to Practice

(1) Any acupuncturist licensed in this state who changes location to some other state or country shall be listed by the Board as inactive.

(2) If the acupuncturist wishes to resume active status, the acupuncturist must file an Affidavit of Reactivation and pay a processing fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the acupuncturist during the period of inactive registration to be such that the acupuncturist would have been denied a license if applying for an initial license.

(4) If an acupuncturist applicant has ceased practice for a period of 24 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification in Acupuncture or Oriental Medicine by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);

(b) Provide documentation of current NCCAOM Acupuncture or Oriental Medicine certification;

(c) Complete 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice;

(d) Complete a mentorship of at least 20 hours under a Board-approved mentor who must individually supervise the licensee. The mentor must report the successful completion of the mentorship to the Board.

(5) The acupuncturist applicant who has ceased practice for a period of five or more consecutive years may be required to complete a re-entry plan to the satisfaction of the Board. The re-entry plan must be reviewed and approved through a Consent Agreement prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section

(4) of this rule and such additional requirements as determined appropriate by the Board.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.175 & 677.759
Hist.: ME 24-1987, f. & ef. 10-29-87; ME 6-1993, f. & cert. ef. 4-22-93; ME 10-1996, f. & cert. ef. 10-29-96; BME 16-1999, f. & cert. ef. 10-28-99; BME 12-2005, f. & cert. ef. 10-12-05; BME 5-2009, f. & cert. ef. 1-22-09; OMB 8-2012, f. & cert. ef. 2-10-12; OMB 11-2014, f. & cert. ef. 4-9-14; OMB 3-2015, f. & cert. ef. 1-13-15

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Update OSGP rules to reflect changes to federal law and proposed improvements in the program.
Adm. Order No.: PERS 1-2015
Filed with Sec. of State: 1-8-2015
Certified to be Effective: 1-8-15
Notice Publication Date: 10-1-2014
Rules Amended: 459-050-0076, 459-050-0120
Subject: OAR 459-050-0076, In-Plan Roth Conversion, allows plan participants to convert their pre-tax dollars in OSGP to after-tax and move their money to the Roth 457 account. Initially, the Internal Revenue Code only allowed this option after plan participants had a severance from employment. However, with the passage of the American Taxpayer Relief Act of 2012, plan participants are now eligible to convert any pre-tax money in their OSGP account to the Roth 457 account while still employed.

Paragraph (1)(a)(A) of the rule has been modified and paragraph (B) has been deleted because plan participants no longer need a severance of employment to be eligible for an In-Plan Roth Conversion. Paragraph (1)(a)(E) has been deleted because the IRS has not provided guidance that non-spouse beneficiaries are eligible for In-Plan Roth Conversion.

Finally, subsection (3)(a) has been modified because only plan participants who are making a Roth conversion after a severance from employment are required to receive a written explanation on the rollover eligibility of their Roth conversion amount.

OAR 459-050-0120, Self-Directed Brokerage Option, was adopted in 2011 to implement the new option added to the OSGP. Previously, the Oregon State Treasury required that participants have at least $20,000 in their OSGP account before they could participate in the Self-Directed Brokerage Option. Treasury has now agreed to lower the restriction to a $10,000 account balance. This change was approved by the Oregon Investment Council (OIC) at its July 30, 2014 meeting. Subsection (2)(a) of the rule was modified to reflect the new dollar amount.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0076
In-Plan Roth Conversion

(1) Definitions. For purposes of this rule:

(a) "Distributee" means:

(A) A Deferred Compensation Plan participant;

(B) The surviving spouse of a deceased participant; or

(C) The spouse or former spouse who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507.

(b) "In-Plan Roth Conversion" means payment by the Deferred Compensation Program directly from the Deferred Compensation Account to the Designated Roth Account as instructed by the Distributee and in compliance with IRC Section 402A(c)(4).

(2) Limitations.

(a) If a Distributee elects an In-Plan Roth Conversion, the Distributee may not roll the money back to the Deferred Compensation Account at a later date.

(b) Once completed, all balances from any In-Plan Roth Conversion shall be accounted for individually and separately within the Designated Roth Account.

(3) 402(f) Notice and Election Procedure.

(a) For a Distributee making an In-Plan Roth Conversion after severance of employment, the Deferred Compensation Program staff shall provide such Distributee with a written explanation of the direct rollover rules for any eligible distribution, as required by IRC Section 402(f).

(b) An In-Plan Roth Conversion election shall be in writing and must be signed by the Distributee or by his or her authorized representative pursuant to a valid power of attorney. The election must be on forms furnished by the Deferred Compensation Program.

Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.462
Hist.: PERS 10-2012, f. & cert. ef. 5-24-12; PERS 1502914, f. & cert. ef. 11-21-14; PERS 1-2015, f. & cert. ef. 1-8-15

459-050-0120
Self-Directed Brokerage Option

(1) For purposes of this rule:

(a) "Core Investment Option" means an investment alternative made available under ORS 243.421, but does not include the Self-Directed Brokerage Option.

(b) "Self-Directed Brokerage Option" means an investment alternative made available under ORS 243.421 that permits a participant to establish a brokerage account and participate in investment products other than core investment options.

(c) "Trade" has the same meaning as in OAR 459-050-0037.

(2) A participant may initiate participation in the Self-Directed Brokerage Option only by a trade from core investment options.

(a) The participant's combined Deferred Compensation and Designated Roth Accounts balance must be at least $10,000 on the date of the trade.

(b) The amount of the trade may not exceed 50 percent of the participant's combined Deferred Compensation and Designated Roth Accounts balance on the date of the trade.

(3) A participant in the Self-Directed Brokerage Option may not:

(a) Contribute to the Self-Directed Brokerage Option by any means other than a trade from a core investment option.

(b) Make a trade from a core investment option to the Self-Directed Brokerage Option if:

(A) The participant's balance in the Self-Directed Brokerage Option exceeds the balance in the participant's core investment options on the date of the trade; or

(B) The trade would cause the participant's balance in the Self-Directed Brokerage Option to exceed the participant's balance in the core investment options on the date of the trade.

(4) The Self-Directed Brokerage Option may not be included in any automatic account rebalancing function offered by the Program.

(5) Notwithstanding OAR 459-050-0080, funds in the Self-Directed Brokerage Option are not available for distribution.

(a) Funds in the Self-Directed Brokerage Option must be traded to a core investment option to be available for distribution under OAR 459-050-0080.

(b) A participant, beneficiary, or alternate payee subject to Required Minimum Distributions, as described in OAR 459-050-0300, must maintain a balance in the core investment options that will accommodate the timely distribution of the required amount.

(c) A participant, beneficiary, or alternate payee who fails to comply with subsection (b) of this section is solely responsible for any tax, penalty, or cost imposed by reason of a delayed or partial required minimum distribution.

(6) The Deferred Compensation Manager, if necessary to comply with restrictions imposed by a participating mutual fund, a contracted broker, or the Securities and Exchange Commission, may establish additional temporary restrictions for the Self-Directed Brokerage Option.

(7) Any action taken by the Deferred Compensation Manager under section (6) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.

(8) The restrictions provided in this rule are not exclusive. The Board may establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507
Hist.: PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12; PERS 1502914, f. & cert. ef. 11-21-14; PERS 1-2015, f. & cert. ef. 1-8-15

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Oregon Tourism Commission
Chapter 976

Rule Caption: Oregon Tourism Commission Notice of Proposed Rule and Model Rule Adoption

Adm. Order No.: ORTC 1-2014
Filed with Sec. of State: 12-17-2014
Certified to be Effective: 12-17-14
Notice Publication Date:
Rules Adopted: 976-001-0010, 976-001-0020
Subject: These rules adopt the most current version of the model rules for state agencies applicable to rulemaking.
Rules Coordinator: Sarah Watson—(503) 967-1568

976-001-0010
Notice of Proposed Rule

Prior to adoption, amendment or repeal of any permanent rule, the Oregon Tourism Commission will give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Oregon Bulletin referred to in ORS 183.360, at least 21 days prior to the effective date of the rule;

(2) By mailing a copy of the notice, at least 28 days prior to the effective date of the rule, to persons on the Oregon Tourism Commission's rules mailing list and to persons who have requested such notice in accordance with ORS 183.335(8);

(3) By posting notice on the Oregon Tourism Commission website at least 28 days prior to the effective date of the rule; and

(4) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 284.111(6)
Stats. Implemented: ORS 284.111(6) & 183.341
Hist.: ORTC 1-2014, f. & cert. ef. 12-17-14

976-001-0020
Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, in effect on November 1, 2014, are adopted as the rules of procedure for the Oregon Tourism Commission and shall be followed in all matters except where a different procedure is prescribed by statute.

Stat. Auth.: ORS 284.111(6)
Stats. Implemented: ORS 284.111(6) & 183.341
Hist.: ORTC 1-2014, f. & cert. ef. 12-17-14

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Psychiatric Security Review Board
Chapter 859

Rule Caption: Updates rulemaking notice recipients, cost of rules and definitions. Adds teleconferencing and media during hearings.
Adm. Order No.: PSRB 2-2014
Filed with Sec. of State: 12-18-2014
Certified to be Effective: 12-18-14
Notice Publication Date: 11-1-2014
Rules Adopted: 859-050-0100, 859-050-0105
Rules Amended: 859-001-0005, 859-001-0010, 859-010-0005
Subject: Amends outdated notice and cost sections in PSRB's Rulemaking Procedures' Division 10 and amends Definitions' section of rules found in PSRB's Division 50 to include new definitions such as "Abscond", "Escape", "Victim", "Tier One or Tier Two Offender" and "Case Managers". The amended version changes "Danger" and "Mental Disease or Defect". In addition, the PSRB has adopted new rules for "Use of Teleconferencing and Video Teleconferencing During Hearings" and "Protocol for Media at Hearings", found in Division 50 of its rules under Hearing Procedures.
Rules Coordinator: Lucy Heil—(503) 229-5596

859-001-0005
Notice

Prior to the adoption, amendment or repeal of any rule, the Psychiatric Security Review Board shall give notice of the intended action:

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

(2) By mailing a copy of the notice to persons on the PSRB's mailing list established pursuant to ORS 183.335(8) at least 28 days before the rule takes effect;

(3) By mailing or furnishing a copy of the notice to Designated Legislators in accordance with ORS 183.335(15) at least 49 days before the rule takes effect;

(4) By mailing or furnishing a copy of the notice to:

(a) Associated Press;
(b) Attorney General;
(c) Attorneys for Adult Clients;
(d) DHS/AMH PSRB Liasons;
(e) Disability Rights Oregon (DRO);
(f) Oregon Association of Chiefs of Police
(g) Oregon Criminal Defense Lawyers Association;
(h) Oregon District Attorneys Association;
(i) Oregon Psychiatric Association
(j) Oregon Psychological Association
(k) Oregon State Sheriff's Association
(l) OSH Consumer and Family Services;
(m) PSRB Community Case Managers;

Stat. Auth.: ORS 161.387(1)
Stats. Implemented: ORS 161.387
Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14

859-001-0010
Cost of Administrative Rules

Copies of administrative rules are available electronically at no charge on the Secretary of State's website: http://sos.oregon.gov/archives/pages/oregon_administrative_rules.aspx. PSRB staff can also email copies of proposed administrative rules to interested parties.

Stat. Auth.: ORS 161 & 183
Stats. Implemented: ORS 161.387
Hist.: PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14

859-010-0005
Definitions

(1) "Abscond" means a client on conditional release has departed without permission from the case manager or Board and the client's whereabouts are unknown.

(2) "Administrative Hearing" means a meeting of the Board where a quorum is present and a matter is reviewed (e.g. an outpatient supervisor request for modification to a client's conditional release plan). The Board shall consider information in the written record only and no oral testimony shall be received; If an objection is made to the administrative hearing, the client or the state has the right to request a full hearing. On its own motion, the Board may require further information, testimony or the presence of the client and therefore, set the matter for a full hearing.

(3) "Administrative Meeting" is any meeting of the Board where a quorum is present for the purpose of considering matters relating to Board policy and administration. Minutes shall be taken during an administrative meeting and distributed to Board members and interested persons. Minutes shall be voted on and approved at subsequent administrative meetings;

(4) "Case Managers" are individuals designated in the conditional release order who are responsible for ensuring clients on conditional release receive the services and support they need and reporting to the PSRB a client's progress, activities and compliance with conditions of release or lack thereof.

(5) "Client" refers to any person under the jurisdiction of the Board and may be used interchangeably with person or patient or outpatient.

(6) "Conditional Release" is a grant by the court or the Board for a client, patient or defendant to reside outside a state hospital in the community under conditions mandated by the court or Board for monitoring and treatment of mental and physical health.

(7) "Danger"; "Substantial Danger"; or "Dangerousness" means a demonstration or previous demonstration of intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury because of the person's mental disease or defect.

(8) "Escape" means:

(a) A client committed to a state hospital:

(A) Leaves the supervision of hospital staff without permission;

(B) Leaves the hospital without permission; or

(C) Fails to return at the appointed time to the hospital.

(b) Any client who leaves the State of Oregon without authorization of the Board;

(c) Any client who fails to return to the State of Oregon as directed by the Board.

(9) "Full Hearing" is a meeting of the Board where parties are present, testimony is taken and written findings on the issue(s) before the Board are made.

(10) "Insanity Defense", also known as "GEI", refers to a plea or finding of "Guilty Except for Insanity". Nomenclature. For offenses committed on or after January 1, 1984, a person is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal con-

duct, the person lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."

(11) "Mental Disease or Defect"

(a) "Mental Defect" is defined as mental retardation, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM IV-TR) of the American Psychiatric Association.

(b) "Mental Disease" is defined as any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the (c) Diagnostic and Statistical Manual of Mental Disorders (DSM IV-TR) of the American Psychiatric Association. *"Qualifying Mental Disease or Defect" or "Mental Disease or Defect" is defined as a mental disease or mental defect described in subsections (a) and (b), excluding those conditions described in subsection (d). A qualifying mental disease or defect includes:

(A) A mental disease or mental defect in a state of remission which could with reasonable medical probability occasionally become active; or

(B) A mental disease or mental defect that could become active as a result of a non-qualifying mental disease or defect.

(d) *"Non-Qualifying Mental Disease or Defect" is defined as a mental disease or defect where the condition is:

(A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to alcohol-induced psychosis;

(B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct; or

(C) An abnormality constituting a personality disorder.

(12) "Party" means the State, which includes the Oregon Department of Justice or, if representing the State's interest, the District Attorney from the county where the GEI was adjudicated, client and client's counsel.

(13) "PSRB" or "Board" means the Oregon Psychiatric Security Review Board.

(14) "Quorum" means the presence of at least three members, in person or on the telephone, of the Adult Panel of the Board.

(15) "SHRP" means the State Hospital Review Panel. It is an entity established by OHA that supervises Tier Two GEI patients while they reside at the state hospital.

(16) "State Hospital" means any state institution or facility operated by the Oregon Health Authority.

(17) "Tier One or Tier Two Offender" means an individual adjudicated guilty except for insanity of a crime as defined in ORS 161.332.

(18) "Victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime that brought the client under the Board's jurisdiction. In the case of a homicide or abuse of a corpse, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the PSRB client be considered a victim of his/her own GEI case.

Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.295 - 161.400
Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14

859-050-0100
Use of Teleconferencing and Video Teleconferencing During Hearings

(1) The Board recognizes that in-person attendance at hearings is preferable yet is not always practicable. Therefore, teleconferencing and video teleconferencing may be permitted.

(2) Telephonic participation via telephone is permitted at PSRB Hearings.

(a) All participants on the phone, even if solely listening in, are expected to identify who they are or have a designated person, such as the Victim Advocate or client family member, identify they are participating by phone.

(b) Participants on the phone will be recorded, even if they are muted, by the recording equipment. Therefore, participants are expected to listen to the hearings in a location that will minimize any noise interference, such as television, wind/rain/weather background noise, and conversations with others. When there are multiple participants on the conference line, it is expected that there will be professional decorum.

(c) If Board staff is given prior notice by a telephonic participant with a hearing day contact phone number or e-mail, staff will call or email participants approximately fifteen (15) minutes prior to the start of the hearing.

(3) Video teleconferencing may be used by clients, witnesses or victims when the hearings recording equipment allows for its use.

(a) If the client is appearing via video teleconference, Board staff will ensure that the defense counsel has the ability to consult with the client at any time during the hearing in a setting where the attorney-client privilege is not compromised.

(b) All clients who reside at Oregon Department of Corrections will appear for PSRB hearings via video teleconferencing.

(c) All clients who reside at Junction City State Hospital will appear for hearings via video teleconferencing, unless there is a basis for in-person attendance that cannot be accommodated by teleconferencing and the State Hospital can arrange for transportation.

(A) Either party must request in-person attendance in writing no later than ten (10) days prior to the scheduled hearing.

(B) In-person requests shall contain a basis for the request and some description as to why video teleconferencing is not appropriate for the particular hearing.

(d) Clients or attorneys may request that participants appear via video teleconference when in-person participating is not feasible, such as a client who has difficulty traveling to the hearing location or weather conditions that make travel dangerous.

(3) Any party may request the Board order in-person attendance of a witness or client if the written request is made at least 3 days prior to notice of the hearing. Parties need to give notice to the Board if the party wants in-person presence rather than video presence of other parties or witnesses. The request shall include the basis or reason for in-person attendance that cannot otherwise be achieved via telephone or video teleconferencing.

(4) PSRB Board members may appear by telephone or video teleconferencing when in-person attendance is not practicable.

Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.295 - 161.400
Hist.: PSRB 2-2014, f. & cert. ef. 12-18-14

859-050-0105
Protocol for Media at Hearings

(1) Public Access Coverage Defined. As used in this rule:

(a) "Public access coverage" means coverage by means of any public access coverage equipment.

(b) "Public access coverage equipment" means any of the following in the possession of persons other than the PSRB or the PSRB staff: television equipment; still photographer equipment; audio, video, or other electronic recording equipment.

(2) Notification to Record Hearings. The news media must notify the PSRB of their request to record video, still photography, or audio of a PSRB proceeding by submitting a request for media or other public access coverage of PSRB at least one business day (24 hours) prior to the scheduled hearing day. Notice of media or public access coverage requests given to the PSRB less than twenty-four (24) hours prior to a scheduled hearing will be taken under advisement by the Board and may result in coverage access being denied directly in the hearings room. PSRB rules require that an original be filed with the PSRB. Submissions shall be emailed to PSRB at: psrb@psrb.org.

(3) Equipment and Operators

(a) Only one television camera and/or one still camera each with a single camera operator will be permitted in the PSRB proceeding. Cameras and operators must be in designated locations. Interviews may only be conducted in the area designated by the Board, or AMH, if hearings are conducted at OSH.

(b) It is up to the PSRB Board Chair, or Acting Chair, typically through its staff, to decide where cameras and microphones may be placed in the hearings room. Each hearings room is different and PSRB Board members may differ on this so operators must ask for assistance to determine camera placement on the day of the hearing.

(c) Equipment and camera operators must be in place prior to the PSRB hearing. Equipment must not be installed, moved or removed from the hearings room while the PSRB hearing is in session. Camera operators may not move around the hearings room while hearings are in session.

(d) News media must arrange any pooling of footage, photographs or audio among themselves. Typically, the first camera to arrive at the hearings room will be allowed to set-up in the hearings room. The PSRB will not participate in any pooling agreement. The PSRB will not mediate in the

event of disagreements about pooling arrangements. Disagreements about pooling arrangements will not result in additional media equipment being allowed into the hearings room and they will not cause a delay in the hearing start time. In the absence of agreement on pooling issues by persons seeking public access coverage, the PSRB Chair or Acting Chair may exclude any or all public access coverage.

(e) No public access coverage device shall be operated by more than one person.

(f) No person shall use public access coverage equipment that interferes or distracts from proceedings in the hearings room.

(g) The video camera must be mounted on a tripod or other device or installed in the hearings room. The tripod or other device must not be moved while the proceedings are in session. Video equipment must be screened where practicable or located and operated as directed by the Board Chair.

(h) No artificial lighting devices of any kind shall be allowed.

(4) Limitations on Access/Media shall not record:

(a) Any notes or conversations intended to be private including, but not limited to counsel, victims, Board members and members of the public attending hearings.

(b) Portions of the hearing that would interfere with the rights of the parties to a fair hearing or would affect the presentation of evidence or outcome of the hearing. This may include if public access coverage affects the PSRB clients ability to effectively participate in his/her hearing.

(c) Any portion of the hearing that would interfere with a victim's entitlement to due dignity and respect. This may include prohibiting the recording of a victim impact statement or other portions of the hearing that include graphic depictions of the instant offense.

(d) Any cost or increased burden resulting from the public access coverage would interfere with the efficient administration of justice.

(e) Recording equipment may not be used in the visitor area.

(5) A Board Chair may summarily prohibit public access coverage of particular hearing attendees or witnesses, if the attendee or witness so requests.

(6) Violations. Any violation of this rule may result in sanctions including but not limited to the termination of media coverage privileges.

Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.295 - 161.400
Hist.: PSRB 2-2014, f. & cert. ef. 12-18-14

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Rulemaking to Update ANSI Edition Adopted in Vegetation Pruning Standards.
Adm. Order No.: PUC 9-2014
Filed with Sec. of State: 12-16-2014
Certified to be Effective: 12-16-14
Notice Publication Date: 11-1-2014
Rules Amended: 860-024-0017
Subject: This rulemaking updates the adopted edition of the American National Standard for Tree Care Operations, ANSI A300 (Part 1) from the 2001 edition to the 2008 edition.
Rules Coordinator: Diane Davis—(503) 378-4372

860-024-0017
Vegetation Pruning Standards

An operator that is an electric utility as defined in ORS 758.505 must perform tree and vegetation work associated with line clearance in compliance with the American National Standard for Tree Care Operations, ANSI A300 (Part 1) 2008 Pruning, approved May 1, 2008, by the American National Standards Institute.

[Publications: Publications referenced are available from the Agency.]
Stat. Auth.: ORS Ch. 756, 757, 758
Stats. Implemented: ORS 757.035, 758.280-758.286
Hist.: PUC 16-2002, f. & cert. ef. 6-14-02; PUC 9-2014, f. & cert. ef. 12-16-14

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333-106-0301	1-1-2015	Amend	2-1-2015
333-106-0325	1-1-2015	Amend	2-1-2015
333-106-0601	1-1-2015	Amend	2-1-2015
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333-106-0750	1-1-2015	Amend	2-1-2015
333-116-0130	1-1-2015	Amend	2-1-2015
333-116-0190	1-1-2015	Amend	2-1-2015
333-119-0010	1-1-2015	Amend	2-1-2015
333-119-0020	1-1-2015	Amend	2-1-2015
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333-120-0200	1-1-2015	Amend	2-1-2015
333-120-0670	1-1-2015	Amend	2-1-2015
333-121-0001	1-1-2015	Amend	2-1-2015
333-121-0010	1-1-2015	Amend	2-1-2015
333-121-0020	1-1-2015	Amend	2-1-2015
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335-005-0026	11-17-2014	Adopt	1-1-2015
339-010-0006	11-20-2014	Adopt	1-1-2015
340-041-0002	1-7-2015	Amend	2-1-2015
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340-041-0124	1-7-2015	Amend	2-1-2015
340-041-0310	1-7-2015	Amend	2-1-2015
340-041-0315	1-7-2015	Amend	2-1-2015
340-041-8033	1-7-2015	Adopt	2-1-2015
340-220-0030	1-7-2015	Amend	2-1-2015
340-220-0040	1-7-2015	Amend	2-1-2015
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340-253-0060	2-1-2015	Amend	2-1-2015
340-253-0100	2-1-2015	Amend	2-1-2015
340-253-0200	2-1-2015	Amend	2-1-2015
340-253-0250	2-1-2015	Amend	2-1-2015
340-253-0310	2-1-2015	Amend	2-1-2015
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340-253-2100	2-1-2015	Adopt	2-1-2015
340-253-2200	2-1-2015	Adopt	2-1-2015
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340-253-3020	2-1-2015	Am. & Ren.	2-1-2015
340-253-3030	2-1-2015	Am. & Ren.	2-1-2015
340-253-3040	2-1-2015	Am. & Ren.	2-1-2015
340-253-3050	2-1-2015	Am. & Ren.	2-1-2015
340-253-8010	2-1-2015	Adopt	2-1-2015
340-253-8020	2-1-2015	Adopt	2-1-2015
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407-007-0210	12-1-2014	Amend	1-1-2015
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407-007-0240	12-1-2014	Amend	1-1-2015
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407-007-0350	12-1-2014	Amend	1-1-2015
407-007-0600	12-1-2014	Adopt	1-1-2015
407-007-0610	12-1-2014	Adopt	1-1-2015
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410-121-0030	12-12-2014	Amend	1-1-2015
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410-121-0030	1-1-2015	Amend(T)	2-1-2015
410-121-0030(T)	12-12-2014	Repeal	1-1-2015
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410-121-0040	12-12-2014	Amend(T)	1-1-2015
410-121-0040	1-1-2015	Amend(T)	2-1-2015
410-121-0040(T)	12-12-2014	Repeal	1-1-2015
410-122-0080	1-1-2015	Amend	2-1-2015
410-122-0202	1-1-2015	Amend	2-1-2015
410-122-0520	1-1-2015	Amend	2-1-2015
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410-130-0220	12-24-2014	Amend(T)	2-1-2015
410-130-0240	1-1-2015	Amend	1-1-2015
410-141-0060	1-1-2015	Amend(T)	1-1-2015
410-141-0420	1-1-2015	Amend	1-1-2015
410-141-0420(T)	1-1-2015	Repeal	1-1-2015
410-141-0520	12-31-2014	Amend	2-1-2015
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410-141-3269	1-1-2015	Adopt(T)	2-1-2015
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410-172-0030	1-1-2015	Suspend	2-1-2015
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410-172-0310	1-1-2015	Suspend	2-1-2015
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410-172-0330	1-1-2015	Suspend	2-1-2015
410-172-0340	1-1-2015	Suspend	2-1-2015
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410-172-0660	1-1-2015	Adopt(T)	2-1-2015
410-172-0670	1-1-2015	Adopt(T)	2-1-2015
410-172-0680	1-1-2015	Adopt(T)	2-1-2015
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410-172-0780	1-1-2015	Adopt(T)	2-1-2015
410-172-0790	1-1-2015	Adopt(T)	2-1-2015
410-172-0800	1-1-2015	Adopt(T)	2-1-2015
410-172-0810	1-1-2015	Adopt(T)	2-1-2015
410-172-0820	1-1-2015	Adopt(T)	2-1-2015
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410-172-0840	1-1-2015	Adopt(T)	2-1-2015
410-172-0850	1-1-2015	Adopt(T)	2-1-2015

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411-020-0080	1-1-2015	Amend	1-1-2015
411-020-0085	1-1-2015	Amend	1-1-2015
411-020-0090	1-1-2015	Amend	1-1-2015
411-020-0100	1-1-2015	Amend	1-1-2015
411-020-0110	1-1-2015	Amend	1-1-2015
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411-020-0130	1-1-2015	Amend	1-1-2015
411-030-0040	1-1-2015	Amend(T)	2-1-2015
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411-035-0015	1-1-2015	Amend(T)	2-1-2015
411-035-0025	1-1-2015	Amend(T)	2-1-2015
411-035-0040	1-1-2015	Amend(T)	2-1-2015
411-035-0055	1-1-2015	Amend(T)	2-1-2015
411-035-0070	1-1-2015	Amend(T)	2-1-2015
411-035-0085	1-1-2015	Amend(T)	2-1-2015
411-050-0602	1-1-2015	Amend(T)	2-1-2015
411-050-0625	1-1-2015	Amend(T)	2-1-2015
411-050-0640	1-1-2015	Amend(T)	2-1-2015
411-050-0645	1-1-2015	Amend(T)	2-1-2015
411-050-0655	1-1-2015	Amend(T)	2-1-2015
411-050-0665	1-1-2015	Amend(T)	2-1-2015
411-054-0005	1-15-2015	Amend	2-1-2015
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411-054-0090	1-15-2015	Amend	2-1-2015
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411-054-0300	1-15-2015	Amend	2-1-2015
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411-085-0013	1-1-2015	Amend(T)	2-1-2015
411-085-0015	1-1-2015	Amend(T)	2-1-2015
411-085-0030	1-1-2015	Amend(T)	2-1-2015
411-085-0040	1-1-2015	Amend(T)	2-1-2015
411-085-0060	1-1-2015	Amend(T)	2-1-2015
411-085-0310	1-1-2015	Amend(T)	2-1-2015
411-085-0350	1-1-2015	Amend(T)	2-1-2015
411-085-0360	1-1-2015	Amend(T)	2-1-2015
411-085-0370	1-1-2015	Amend(T)	2-1-2015
411-089-0010	1-1-2015	Amend(T)	2-1-2015
411-089-0020	1-1-2015	Amend(T)	2-1-2015
411-089-0030	1-1-2015	Amend(T)	2-1-2015
411-089-0040	1-1-2015	Amend(T)	2-1-2015
411-089-0050	1-1-2015	Amend(T)	2-1-2015
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411-089-0075	1-1-2015	Amend(T)	2-1-2015
411-089-0100	1-1-2015	Amend(T)	2-1-2015
411-089-0110	1-1-2015	Amend(T)	2-1-2015
411-089-0120	1-1-2015	Amend(T)	2-1-2015
411-089-0130	1-1-2015	Amend(T)	2-1-2015
411-089-0140	1-1-2015	Amend(T)	2-1-2015
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411-308-0040	12-28-2014	Amend	2-1-2015
411-308-0050	12-28-2014	Amend	2-1-2015
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411-308-0070(T)	12-28-2014	Repeal	2-1-2015
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411-308-0130	12-28-2014	Amend	2-1-2015
411-308-0130(T)	12-28-2014	Repeal	2-1-2015
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411-308-0150	12-28-2014	Amend	2-1-2015
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411-317-0000(T)	12-28-2014	Repeal	2-1-2015
411-318-0000	12-28-2014	Adopt	2-1-2015
411-318-0000(T)	12-28-2014	Repeal	2-1-2015
411-318-0005	12-28-2014	Adopt	2-1-2015
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411-318-0015	12-28-2014	Adopt	2-1-2015
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411-320-0100(T)	12-28-2014	Repeal	2-1-2015
411-320-0110	12-28-2014	Amend	2-1-2015
411-320-0110(T)	12-28-2014	Repeal	2-1-2015
411-320-0120	12-28-2014	Amend	2-1-2015
411-320-0120(T)	12-28-2014	Repeal	2-1-2015
411-320-0130	12-28-2014	Amend	2-1-2015
411-320-0130(T)	12-28-2014	Repeal	2-1-2015
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411-320-0170(T)	12-28-2014	Repeal	2-1-2015
411-320-0175	12-28-2014	Amend	2-1-2015
411-320-0175(T)	12-28-2014	Repeal	2-1-2015
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411-320-0200	12-28-2014	Amend	2-1-2015
411-323-0010	12-28-2014	Amend	2-1-2015
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411-323-0020(T)	12-28-2014	Repeal	2-1-2015
411-323-0030	12-28-2014	Amend	2-1-2015
411-323-0030(T)	12-28-2014	Repeal	2-1-2015
411-323-0035	12-28-2014	Amend	2-1-2015
411-323-0035(T)	12-28-2014	Repeal	2-1-2015
411-323-0040	12-28-2014	Amend	2-1-2015
411-323-0050	12-28-2014	Amend	2-1-2015
411-323-0050(T)	12-28-2014	Repeal	2-1-2015
411-323-0060	12-28-2014	Amend	2-1-2015
411-323-0060(T)	12-28-2014	Repeal	2-1-2015
411-323-0070	12-28-2014	Amend	2-1-2015
411-323-0070(T)	12-28-2014	Repeal	2-1-2015
411-325-0020	12-28-2014	Amend	2-1-2015
411-325-0020(T)	12-28-2014	Repeal	2-1-2015
411-325-0060	12-28-2014	Amend	2-1-2015
411-325-0060(T)	12-28-2014	Repeal	2-1-2015
411-325-0110	12-28-2014	Amend	2-1-2015
411-325-0110(T)	12-28-2014	Repeal	2-1-2015
411-325-0120	12-28-2014	Amend	2-1-2015
411-325-0120(T)	12-28-2014	Repeal	2-1-2015
411-325-0180	12-28-2014	Amend	2-1-2015
411-325-0185	12-28-2014	Amend	2-1-2015
411-325-0230	12-28-2014	Amend	2-1-2015
411-325-0300	12-28-2014	Amend	2-1-2015
411-325-0300(T)	12-28-2014	Repeal	2-1-2015
411-325-0320	12-28-2014	Repeal	2-1-2015
411-325-0330	12-28-2014	Repeal	2-1-2015
411-325-0360	12-28-2014	Amend	2-1-2015
411-325-0390	12-28-2014	Amend	2-1-2015
411-325-0390(T)	12-28-2014	Repeal	2-1-2015
411-325-0400	12-28-2014	Repeal	2-1-2015
411-325-0430	12-28-2014	Amend	2-1-2015
411-325-0430(T)	12-28-2014	Repeal	2-1-2015
411-325-0460	12-28-2014	Amend	2-1-2015
411-325-0460(T)	12-28-2014	Repeal	2-1-2015
411-328-0550	12-28-2014	Amend	2-1-2015
411-328-0560	12-28-2014	Amend	2-1-2015
411-328-0560(T)	12-28-2014	Repeal	2-1-2015
411-328-0570	12-28-2014	Amend	2-1-2015
411-328-0620	12-28-2014	Amend	2-1-2015
411-328-0630	12-28-2014	Amend	2-1-2015
411-328-0640	12-28-2014	Amend	2-1-2015
411-328-0650	12-28-2014	Amend	2-1-2015
411-328-0660	12-28-2014	Amend	2-1-2015
411-328-0680	12-28-2014	Amend	2-1-2015
411-328-0690	12-28-2014	Amend	2-1-2015
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411-328-0700(T)	12-28-2014	Repeal	2-1-2015
411-328-0710	12-28-2014	Amend	2-1-2015
411-328-0715	12-28-2014	Amend	2-1-2015
411-328-0720	12-28-2014	Amend	2-1-2015
411-328-0720(T)	12-28-2014	Repeal	2-1-2015
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411-328-0750	12-28-2014	Amend	2-1-2015
411-328-0750(T)	12-28-2014	Repeal	2-1-2015
411-328-0760	12-28-2014	Amend	2-1-2015
411-328-0760(T)	12-28-2014	Repeal	2-1-2015
411-328-0770	12-28-2014	Amend	2-1-2015
411-328-0770(T)	12-28-2014	Repeal	2-1-2015
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411-328-0790(T)	12-28-2014	Repeal	2-1-2015
411-328-0800	12-28-2014	Repeal	2-1-2015
411-330-0020	12-28-2014	Amend	2-1-2015
411-330-0020(T)	12-28-2014	Repeal	2-1-2015
411-330-0030	12-28-2014	Amend	2-1-2015
411-330-0030(T)	12-28-2014	Repeal	2-1-2015
411-330-0040	12-28-2014	Amend	2-1-2015
411-330-0040(T)	12-28-2014	Repeal	2-1-2015
411-330-0050	12-28-2014	Amend	2-1-2015
411-330-0050(T)	12-28-2014	Repeal	2-1-2015
411-330-0060	12-28-2014	Amend	2-1-2015
411-330-0060(T)	12-28-2014	Repeal	2-1-2015
411-330-0065	12-28-2014	Amend	2-1-2015
411-330-0070	12-28-2014	Amend	2-1-2015
411-330-0070(T)	12-28-2014	Repeal	2-1-2015
411-330-0080	12-28-2014	Amend	2-1-2015
411-330-0080(T)	12-28-2014	Repeal	2-1-2015
411-330-0090	12-28-2014	Amend	2-1-2015
411-330-0090(T)	12-28-2014	Repeal	2-1-2015
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411-330-0100(T)	12-28-2014	Repeal	2-1-2015
411-330-0110	12-28-2014	Amend	2-1-2015
411-330-0110(T)	12-28-2014	Repeal	2-1-2015
411-330-0130	12-28-2014	Amend	2-1-2015
411-330-0130(T)	12-28-2014	Repeal	2-1-2015
411-330-0140	12-28-2014	Amend	2-1-2015
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411-340-0020(T)	12-28-2014	Repeal	2-1-2015
411-340-0050	12-28-2014	Amend	2-1-2015
411-340-0060	12-28-2014	Amend	2-1-2015
411-340-0060(T)	12-28-2014	Repeal	2-1-2015

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411-340-0100	12-28-2014	Amend	2-1-2015
411-340-0100(T)	12-28-2014	Repeal	2-1-2015
411-340-0110	12-28-2014	Amend	2-1-2015
411-340-0110(T)	12-28-2014	Repeal	2-1-2015
411-340-0120	12-28-2014	Amend	2-1-2015
411-340-0120(T)	12-28-2014	Repeal	2-1-2015
411-340-0125	12-28-2014	Amend	2-1-2015
411-340-0130	12-28-2014	Amend	2-1-2015
411-340-0130(T)	12-28-2014	Repeal	2-1-2015
411-340-0135	12-28-2014	Adopt	2-1-2015
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411-340-0150	12-28-2014	Amend	2-1-2015
411-340-0150(T)	12-28-2014	Repeal	2-1-2015
411-340-0160	12-28-2014	Amend	2-1-2015
411-340-0160(T)	12-28-2014	Repeal	2-1-2015
411-340-0170	12-28-2014	Amend	2-1-2015
411-340-0170(T)	12-28-2014	Repeal	2-1-2015
411-340-0180	12-28-2014	Amend	2-1-2015
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411-345-0010(T)	12-28-2014	Repeal	2-1-2015
411-345-0020	12-28-2014	Amend	2-1-2015
411-345-0020(T)	12-28-2014	Repeal	2-1-2015
411-345-0025	12-28-2014	Amend	2-1-2015
411-345-0025(T)	12-28-2014	Repeal	2-1-2015
411-345-0027	12-28-2014	Adopt	2-1-2015
411-345-0027(T)	12-28-2014	Repeal	2-1-2015
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411-345-0130(T)	12-28-2014	Repeal	2-1-2015
411-345-0140	12-28-2014	Amend	2-1-2015
411-345-0140(T)	12-28-2014	Repeal	2-1-2015
411-345-0160	12-28-2014	Amend	2-1-2015
411-345-0160(T)	12-28-2014	Repeal	2-1-2015
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411-345-0170(T)	12-28-2014	Repeal	2-1-2015
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411-345-0190(T)	12-28-2014	Repeal	2-1-2015
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411-345-0200(T)	12-28-2014	Repeal	2-1-2015
411-345-0230	12-28-2014	Amend	2-1-2015
411-345-0230(T)	12-28-2014	Repeal	2-1-2015
411-345-0240	12-28-2014	Amend	2-1-2015
411-345-0240(T)	12-28-2014	Repeal	2-1-2015
411-345-0250	12-28-2014	Amend	2-1-2015
411-345-0250(T)	12-28-2014	Repeal	2-1-2015
411-345-0260	12-28-2014	Amend	2-1-2015
411-345-0260(T)	12-28-2014	Repeal	2-1-2015
411-345-0270	12-28-2014	Amend	2-1-2015
411-345-0270(T)	12-28-2014	Repeal	2-1-2015
411-346-0110	12-28-2014	Amend	2-1-2015
411-346-0110(T)	12-28-2014	Repeal	2-1-2015
411-346-0150	12-28-2014	Amend	2-1-2015
411-346-0150(T)	12-28-2014	Repeal	2-1-2015
411-346-0180	12-28-2014	Amend	2-1-2015
411-346-0180(T)	12-28-2014	Repeal	2-1-2015
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411-346-0190(T)	12-28-2014	Repeal	2-1-2015
411-346-0210	12-28-2014	Amend	2-1-2015
411-360-0020	12-28-2014	Amend	2-1-2015
411-360-0020(T)	12-28-2014	Repeal	2-1-2015
411-360-0030	12-28-2014	Amend	2-1-2015
411-360-0130	12-28-2014	Amend	2-1-2015
411-360-0140	12-28-2014	Amend	2-1-2015
411-360-0140(T)	12-28-2014	Repeal	2-1-2015
411-360-0170	12-28-2014	Amend	2-1-2015
411-360-0170(T)	12-28-2014	Repeal	2-1-2015
411-360-0190	12-28-2014	Amend	2-1-2015
411-360-0190(T)	12-28-2014	Repeal	2-1-2015
411-360-0250	12-28-2014	Amend	2-1-2015
411-360-0250(T)	12-28-2014	Repeal	2-1-2015
411-360-0275	12-28-2014	Amend	2-1-2015
411-360-0275(T)	12-28-2014	Repeal	2-1-2015
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411-375-0010	12-28-2014	Adopt	2-1-2015
411-375-0010(T)	12-28-2014	Repeal	2-1-2015
411-375-0020	12-28-2014	Adopt	2-1-2015
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411-375-0040(T)	12-28-2014	Repeal	2-1-2015
411-375-0050	12-28-2014	Adopt	2-1-2015
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411-375-0060	12-28-2014	Adopt	2-1-2015
411-375-0060(T)	12-28-2014	Repeal	2-1-2015
411-375-0070	12-28-2014	Adopt	2-1-2015
411-375-0070(T)	12-28-2014	Repeal	2-1-2015
411-375-0080	12-28-2014	Adopt	2-1-2015
411-375-0080(T)	12-28-2014	Repeal	2-1-2015
413-010-0180	1-1-2015	Amend	2-1-2015
413-010-0185	1-1-2015	Amend	2-1-2015
413-015-0115	12-24-2014	Amend	2-1-2015
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413-015-0415(T)	12-24-2014	Repeal	2-1-2015
413-015-0420	12-24-2014	Amend	2-1-2015
413-015-0420(T)	12-24-2014	Repeal	2-1-2015
413-015-0432	12-24-2014	Amend	2-1-2015
413-015-0432(T)	12-24-2014	Repeal	2-1-2015
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413-015-0540	12-24-2014	Amend	2-1-2015
413-015-0540(T)	12-24-2014	Repeal	2-1-2015
413-015-1105	12-24-2014	Amend	2-1-2015
413-015-1105(T)	12-24-2014	Repeal	2-1-2015
413-015-9030	12-24-2014	Amend	2-1-2015
413-015-9040	12-24-2014	Amend	2-1-2015
413-015-9040(T)	12-24-2014	Repeal	2-1-2015
413-070-0410	1-1-2015	Amend	2-1-2015
413-070-0430	1-1-2015	Amend	2-1-2015
413-070-0450	1-1-2015	Amend	2-1-2015
413-070-0470	1-1-2015	Amend	2-1-2015
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413-090-0140	1-1-2015	Amend	2-1-2015
413-090-0150	1-1-2015	Amend	2-1-2015
413-090-0210	1-1-2015	Amend	2-1-2015
413-200-0414	12-24-2014	Amend	2-1-2015
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414-400-0010	11-25-2014	Amend	1-1-2015
414-400-0020	11-25-2014	Amend	1-1-2015
414-400-0031	11-25-2014	Amend	1-1-2015
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414-400-0040	11-25-2014	Amend	1-1-2015
414-400-0050	11-25-2014	Amend	1-1-2015
414-400-0060	11-25-2014	Amend	1-1-2015
414-400-0080	11-25-2014	Amend	1-1-2015
414-400-0090	11-25-2014	Adopt	1-1-2015
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418-030-0010	12-1-2014	Adopt	1-1-2015
418-030-0020	12-1-2014	Adopt	1-1-2015
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441-035-0230	1-15-2015	Adopt	2-1-2015
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441-860-0090	1-1-2015	Amend	2-1-2015
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459-050-0076	1-8-2015	Amend	2-1-2015
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461-155-0270	1-1-2015	Amend	2-1-2015
461-155-0300	1-1-2015	Amend	2-1-2015
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581-015-2245	12-17-2014	Amend	2-1-2015
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581-022-1661	12-4-2014	Amend	1-1-2015
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581-026-0130	12-17-2014	Amend	2-1-2015
581-026-0210	12-17-2014	Amend	2-1-2015
581-026-0505	12-17-2014	Amend	2-1-2015
582-001-0003	1-1-2015	Repeal	2-1-2015
582-001-0005	1-1-2015	Repeal	2-1-2015
582-001-0010	1-1-2015	Amend	2-1-2015
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603-011-0800	12-30-2014	Adopt(T)	2-1-2015
603-011-0810	12-30-2014	Adopt(T)	2-1-2015
603-011-0820	12-30-2014	Adopt(T)	2-1-2015
603-011-0830	12-30-2014	Adopt(T)	2-1-2015
603-011-0840	12-30-2014	Adopt(T)	2-1-2015
603-052-0860	1-13-2015	Amend	2-1-2015
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635-004-0215	1-15-2015	Amend	2-1-2015
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635-004-0350	1-15-2015	Amend	2-1-2015
635-004-0355	1-1-2015	Amend(T)	1-1-2015
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635-006-0209	1-15-2015	Amend	2-1-2015
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635-006-0232	1-13-2015	Amend	2-1-2015
635-011-0100	1-1-2015	Amend	2-1-2015
635-011-0104	1-1-2015	Amend	2-1-2015
635-013-0004	1-1-2015	Amend	2-1-2015
635-014-0080	1-1-2015	Amend	2-1-2015
635-014-0090	1-1-2015	Amend	2-1-2015
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635-021-0090	1-1-2015	Amend	2-1-2015
635-023-0080	1-1-2015	Amend	2-1-2015
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635-023-0095	1-1-2015	Amend(T)	2-1-2015
635-023-0125	1-1-2015	Amend	2-1-2015
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635-023-0130	1-1-2015	Amend	2-1-2015
635-023-0134	1-1-2015	Amend	2-1-2015
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635-039-0080	1-1-2015	Amend	2-1-2015
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635-039-0090	1-15-2015	Amend(T)	2-1-2015
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635-041-0063(T)	11-25-2014	Suspend	1-1-2015
635-041-0525	1-1-2015	Adopt	1-1-2015
635-043-0151	1-15-2015	Adopt(T)	2-1-2015
635-043-0151(T)	1-15-2015	Suspend	2-1-2015
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635-065-0011	1-6-2015	Amend	2-1-2015
635-065-0015	1-6-2015	Amend	2-1-2015
635-065-0090	1-6-2015	Amend	2-1-2015
635-065-0401	1-6-2015	Amend	2-1-2015
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635-065-0760	1-1-2015	Amend(T)	1-1-2015
635-065-0765	1-6-2015	Amend	2-1-2015
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635-067-0000	1-6-2015	Amend	2-1-2015
635-067-0015	1-6-2015	Amend	2-1-2015
635-067-0032	1-6-2015	Amend	2-1-2015
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635-075-0010	1-6-2015	Amend	2-1-2015
635-075-0020	1-6-2015	Amend	2-1-2015
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690-200-0005	11-25-2014	Amend	1-1-2015
690-210-0310	11-25-2014	Amend	1-1-2015
690-210-0340	11-25-2014	Amend	1-1-2015
690-215-0045	11-25-2014	Amend	1-1-2015
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690-240-0035	11-25-2014	Amend	1-1-2015
690-240-0046	11-25-2014	Amend	1-1-2015
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690-340-0040	1-1-2015	Amend	1-1-2015
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734-059-0040	12-19-2014	Adopt	2-1-2015
734-059-0220	12-19-2014	Amend	2-1-2015
734-060-0000	12-19-2014	Amend	2-1-2015
734-060-0007	12-19-2014	Amend	2-1-2015
734-060-0175	12-19-2014	Amend	2-1-2015
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735-062-0010	12-1-2014	Amend	1-1-2015
735-062-0015	12-1-2014	Amend	1-1-2015
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735-062-0040	12-1-2014	Amend	1-1-2015
735-062-0096	12-1-2014	Amend	1-1-2015
735-062-0110	12-1-2014	Amend	1-1-2015
735-062-0125	12-1-2014	Amend	1-1-2015
735-062-0200	12-1-2014	Amend	1-1-2015
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735-170-0035	7-1-2015	Adopt	1-1-2015
735-170-0040	7-1-2015	Amend	1-1-2015
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735-176-0110	7-1-2015	Adopt	1-1-2015
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801-010-0045	1-8-2015	Amend	1-1-2015
801-010-0050	1-8-2015	Amend	1-1-2015
801-010-0060	1-8-2015	Amend	1-1-2015
801-010-0065	1-8-2015	Amend	1-1-2015
801-010-0073	1-8-2015	Amend	1-1-2015
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801-010-0079	1-8-2015	Amend	1-1-2015
801-010-0080	1-8-2015	Amend	1-1-2015
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801-010-0110	1-8-2015	Amend	1-1-2015
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801-030-0005	1-8-2015	Amend	1-1-2015
801-030-0010	1-8-2015	Amend	1-1-2015
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808-003-0231	12-1-2014	Adopt	1-1-2015
808-008-0425	12-1-2014	Amend	1-1-2015
809-001-0015	12-5-2014	Amend	1-1-2015
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813-055-0095	12-2-2014	Repeal	1-1-2015
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813-090-0036	12-2-2014	Amend	1-1-2015
813-090-0036(T)	12-2-2014	Repeal	1-1-2015
813-090-0037	12-2-2014	Amend	1-1-2015
813-090-0037(T)	12-2-2014	Repeal	1-1-2015
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813-090-0095	12-2-2014	Repeal	1-1-2015
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813-110-0026	12-2-2014	Amend	1-1-2015
813-110-0027	12-2-2014	Amend	1-1-2015
813-110-0030	12-2-2014	Amend	1-1-2015
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847-070-0016	1-13-2015	Amend	2-1-2015
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851-061-0090	1-1-2015	Amend	1-1-2015
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851-063-0020	1-1-2015	Amend	1-1-2015
851-063-0030	1-1-2015	Amend	1-1-2015
851-063-0035	1-1-2015	Amend	1-1-2015
851-063-0070	1-1-2015	Amend	1-1-2015
851-063-0080	1-1-2015	Amend	1-1-2015
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852-010-0023	1-1-2015	Amend	2-1-2015
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852-020-0031	1-1-2015	Amend	2-1-2015
852-020-0035	1-1-2015	Amend	1-1-2015
852-020-0035	1-1-2015	Amend	2-1-2015
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852-050-0006	1-1-2015	Amend	1-1-2015
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852-050-0016	1-1-2015	Amend	2-1-2015
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852-050-0018	1-1-2015	Amend	2-1-2015
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852-050-0025	1-1-2015	Amend	2-1-2015
852-060-0025	1-1-2015	Amend	1-1-2015
852-060-0025	1-1-2015	Amend	2-1-2015
852-060-0027	1-1-2015	Amend	1-1-2015
852-060-0027	1-1-2015	Amend	2-1-2015
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852-070-0035	1-1-2015	Amend	2-1-2015
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852-080-0040	1-1-2015	Amend	2-1-2015
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